BUSINESS, LABOR, AND AGRICULTURE INTERIM COMMITTEE
FINAL REPORT

December 2000

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PREFACE

This document is the final report of the Business, Labor, and Agriculture Interim Committee (Committee) for the 1999-2000 interim. It is divided into four areas representing the various tasks completed by the Committee. Part One: Assigned Studies represents the work conducted on House Bill No. 515 (HB 515), Senate Joint Resolution No. 15 (SJR 15), and Senate Joint Resolution No. 21 (SJR 21). Part Two deals with the Committee's role as a program and policy monitor as it relates to agency activities under Senate Bill No. 11 (SB 11). Part Three of the report covers other issues considered by the Committee. Finally, the Committee's recommendations for legislation appear in Part Four.

EXECUTIVE SUMMARY

The Business, Labor, and Agriculture Interim Committee met on nine occasions, between June of 1999 and September of 2000, to address three individual studies requested by the 56th Legislature and assigned by the Legislative Council: HB 515, SJR 15, and SJR 21. To facilitate the effective collection of information, the Committee created a subcommittee to explore and report any recommendations on the questions posed by SJR 15 regarding the workers' compensation system.

In addition to study assignments, the Committee worked to meet the statutory objectives contained in Senate Bill No. 11, which restructured the familiar interim committee structure of study committees by creating standing interim committees with explicit responsibilities for reviewing assigned agency rules and conducting queries into the effective administration of agency programs. The Committee devoted a full day to listening to presentations from assigned Executive Branch agencies and had certain agencies appear on a number of occasions to inform the Committee on a wide range of policy topics.

Committee members also made time to respond to other issues. Specifically, the Committee directed staff to research and present information on proprietary postsecondary educational institutions and a little-known law allowing for the creation of cooperative associations.

The Committee developed and finalized 12 recommendations, 9 of which take the form of draft bills to be introduced during the 57th Legislative Session.

FINAL RECOMMENDATIONS

1. LC0007 - Requires the registration of each proprietary postsecondary educational institution in Montana. (See Appendix A)

2. LC0069 - Revises the organization of cooperative associations. (See Appendix B)

3. LC0122 - Creates a full cost accounting pilot program for certain state agencies. (See Appendix C)

4. LC0123 - Requires state agencies to prepare a commercial services inventory and creates a formal hearings process to recommend solutions to unfair competition. (See Appendix D)

5. LC0124 - Increases the weekly benefit rate for permanent partial disability and the maximum weekly permanent partial disability payment. (See Appendix E)

6. LC0118 - Reduces the waiting period for receiving total temporary disability payments from 6 to 3 days and provides retroactive compensation from the date of the injury if there is an actual wage loss of greater than 14 calendar days. (See Appendix F)

7. LC0119 - Clarifies criteria required before an insurer can convert temporary total disability or temporary partial disability to permanent partial disability and provides

for a 10-week maximum payment of rehabilitation benefits for certain injured workers. (See Appendix G)

8. LC0120 - Requires insurers to reimburse injured workers for reasonable expenses incurred when traveling to medical providers for treatment. (See Appendix H)

9. LC0125 - Appropriates $188,600 to the Department of Labor and Industry for safety inspections. (See Appendix I)

10. A general recommendation encouraging the Growth Policy Forum convened by the Montana Consensus Council to continue to explore ways to provide additional tools to local governments and other interested stakeholders to preserve agricultural land and open space in Montana.

11. A general recommendation supporting the effort that public and private solid waste providers have put forward to develop consensus legislation that would require that counties and solid waste districts implement a full cost accounting model by 2002, along with a recommendation for continued attempts to reach a similar agreement, if possible, with the Montana League of Cities and Towns.

12. A general recommendation encouraging Montana public utilities regulated by the Public Service Commission to prepare and present to the 57th Legislature issues associated with the state's regulatory environment and recommend whether changes to the regulatory environment in Montana

are necessary to promote fair, open competition and facilitate economic development.

PART ONE: ASSIGNED STUDIES
SECTION ONE

HOUSE BILL NO. 515: STUDY OF GOVERNMENT COMPETITION WITH PRIVATE VENDORS

ENABLING LEGISLATION
Sec. 1, Ch. 478, Laws of 1999

Section 1. Study of government competition with private sector. The legislative council shall designate an appropriate legislative interim committee to study the issue of government competition by political subdivisions of this state with the private sector. The study may include an examination of the impact on the private sector of the provision of goods, services, manufacturing, construction, and maintenance and repair by governmental entities in this state and an examination of the feasibility and desirability of privatizing the sale of goods, specific services, manufacturing, construction, and maintenance and repair activities conducted by political subdivisions. The appropriate committee shall prepare for submission to the 57th legislature a report of its findings and any recommendations or proposed legislation.

INTRODUCTION

If providing the same or similar services is the benchmark for defining whether governmental agencies are competing with the private sector, a cursory glance might reveal that much of what government provides represents a lost opportunity for the private sector. Governmental agencies provide legal services, accounting, maintenance, solid waste, secretarial services, inspection, education, and training, as well as dozens of other services to the agencies and to the public. Thumbing through the yellow pages of any phone directory in Montana yields a lengthy list of private businesses that offer the same or similar services, mostly to the public, but occasionally, to governmental agencies as well. Are public service providers in competition with those private sector businesses?

Among the various ways that competition is defined, the following definition seems appropriate as a basis for the HB 515 study:

> Rivalry in business, as for customers or markets.[1]

The underlying intent of HB 515 was to determine how to eliminate the rivalry between public agencies and private businesses for customers and whether privatization of certain government services would be an appropriate recommendation.

Representative Larry Grinde, sponsor of HB 515, stated that the bill was designed to "level the playing field" and that he viewed the work of the Committee as being critically important in establishing clear legislative direction to governmental agencies as they contemplated the manner in

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[1] *Webster's New World Dictionary of the English Language*, Second College Edition, 1978.

which they provided goods and services.[2] Representative Grinde identified two concepts that he believed were critical for developing the course of action during the interim.

The first concept addressed the issue of discussing what Montana's philosophy should be regarding the future of privatization and setting up a series of guidelines, including the use of full cost accounting, that all government agencies must follow before they enter into a situation that could result in competition with the private sector.[3] The second was the systematic review of whether goods or services should be provided by the public sector or the private sector, an attempt to define government's role, rather than simply choosing a service as a candidate for privatization.[4]

Defining the role of government requires both a philosophical and an objective analytical approach. Mr. Geoff Feiss, a representative of the Montana Telecommunications Association, suggested that it is unwise to assume that all services provided by government are, or should be, public services. A better approach would be to start by assuming that all services are inherently the role of the private sector.[5] Those services that are not viable for-profit endeavors should be taken over by the public sector.

Can the role of government be defined by characterizing what the role of government is not? The approach is a little like defining a dog by saying that it is not a cat. This method assumes that everyone knows what Socks looks like, but has trouble identifying poor old Spot. Still,

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[2] Minutes, Business, Labor, and Agriculture Interim Committee, October 8, 2000, p. 6.

[3] Ibid.

[4] Ibid.

[5] Ibid., p. 5

because government's role means something a bit different to everyone, agreeing in principle on what government should not be doing provides a cornerstone to begin deciding what it should be doing.

The Committee did not act directly on the suggestion of Mr. Feiss. That is to say that the Committee did not review, program by program, service by service, every activity conducted by government. Instead, they chose to create a process by which agencies themselves would review their programs and services and forward their findings for legislative approval or, potentially, disapproval.

KEY GOALS AND OBJECTIVES

The Committee agreed with Representative Grinde that the first and best way to begin "leveling the playing field" was to concentrate on a manageable collection of goals and objectives listed below.[6]

- Review full cost accounting and propose a process to apply the principles of accounting for direct and indirect costs to governmental agency activities.

- Review examples of competition between government agencies and the private sector.

- Review successful privatization efforts and gather information to create a formalized privatization decisionmaking process.

- Explore methods to eliminate, or least begin the process of reducing, competitive disadvantages as a way to establish a broader base to work on solutions.

- Approach unfair competition as a universal problem and seek to develop solutions that affect the concepts of public-private competition rather than specific scenarios.

[6] Ibid., pp. 7-8.

CHAPTER ONE

FULL COST ACCOUNTING

Full cost accounting is a "systematic approach for identifying, summing, and reporting the actual costs" of delivering a service.[7] Full cost accounting isolates programs or services and recognizes the direct and indirect costs of all resources used or committed in support of an operation. The Government Accounting Standards Board (GASB) endorses the use of accrual accounting practices like full cost accounting, but does not require its use under Generally Accepted Accounting Principles (GAAP).[8] Most commonly used by publicly funded solid waste districts, full cost accounting is gaining converts in other public policy arenas and serves a number of management functions, including budgeting, cost control and reduction, setting prices and fees, performance measurement, and program evaluation.

The total cost of providing a service in-house is known as the fully allocated cost. It is the sum of the direct costs plus a proportional share of organizational overhead, or indirect costs.[9] When the direct and indirect costs are identified, the resulting amount represents the fully allocated costs, or total cost, of providing the service in-house. The formula is shown below.

Direct Costs + Indirect Costs = Fully Allocated Cost (Price of the Service)

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[7] U.S. Environmental Protection Agency, Solid Waste and Emergency Response, *Full Cost Accounting for Municipal Solid Waste Management: A Handbook*, September 1997, p. 3.

[8] Ibid., p. 5.

[9] Government Competition Review Committee, *A Study of Unfair Competition Between State Government and Private Sector Entities*, Report to Wyoming State Legislature, January 1996, p. 6.

Direct Costs are those items that only benefit and are only chargeable to the service.[10] Commonly, these direct costs include:

- salaries;
- wages; and
- benefits of government employees working solely on delivering the service.

Direct costs also include:

- supplies;
- materials;
- travel;
- printing;
- rent;
- utilities;
- communications; and
- any other costs expended for the exclusive benefit of the service.

Within the direct cost component of the equation, some costs are occasionally overlooked. Although not exhaustive, these omitted costs may include:

- interest;
- pension costs;
- staff recruiting and training costs;
- property insurance costs; and
- facilities and equipment costs.

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[10] Ibid.

Interest on capital items purchased for the exclusive use of a service through some financial arrangement should be included in calculation of the direct cost of service delivery.[11] An example of interest inclusion is the purchase of a piece of heavy equipment. If this purchase were financed, interest payments are typically taken from a government's general fund, but the interest cost should be included in the cost of providing a service.

Pension costs of government employees should also be included in the direct cost analysis. Even if pension plans are not fully funded, this cost is indeed a cost that affects the overall analysis and should be included.[12]

Indirect Costs, also referred to as *overhead costs*, are costs that benefit two or more government services or programs.[13] The expenses of various administrative and support services that are necessary to the administration of the particular service also include support for additional services. The examples of indirect costs are the same as direct costs, with the only distinction being that these costs are not exclusively directed at a particular service.

Indirect costs are generally apportioned among government services using some allocation method. Agencies may assume that the indirect costs are proportional to the number of employees conducting the service, or they may assume that the costs are proportional to the total

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[11] The Kansas Council on Privatization, *Privatize, Eliminate, Retain, or Modify: A Strategy for Competitiveness in Government*, January 1995, p. 29.

[12] Ibid.

[13] *A Study of Unfair Competition between State Government and Private Sector Entities*, Report to Wyoming State Legislature, Government Competition Review Committee, January, 1996, pp. 6-7.

budget of the service. In essence, the indirect costs are related in size to some measurement of the direct cost of the service.[14]

Montana state agencies are required to comply with GAAP and thus are not required to use full cost accounting to determine the cost of doing business.[15] However, certain state governmental activities do make use of the principles inherent in full cost accounting to establish the rates or fees that they charge to service users.

Section 17-2-102, MCA, establishes a number of different fund categories and types to ensure strict accountability for all revenue received and spent by government agencies.

A fund that lends itself to using full cost accounting is a proprietary fund, which in turn consists of two separate types of funds; internal service funds and enterprise funds. Internal service funds account for operations that provide goods or services to other agencies or programs of state government on a cost-reimbursement basis.[16] Two examples of internal service funded operations are the Information Services Division (ISD) of the Department of Administration and the state motor pool within the Department of Transportation.

The ISD is responsible for providing information technology services to each state agency. Those services are charged out to individual agencies based on a flat rate that is developed using a formula similar to the basic principles of full cost accounting. The ISD establishes the direct and indirect costs associated with providing information technology services

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[14]The Kansas Council on Privatization, *Privatize, Eliminate, Retain, or Modify: A Strategy for Competitiveness in Government*, January 1995, p. 30.

[15]Section 17-1-102(2), MCA.

[16]Section 17-2-102(1)(b)(ii), MCA.

and sets the fees according to the actual cost of delivering the services.[17]

In contrast to internal service funds, enterprise funds account for operations that provide goods and services to the public on a user charge basis.[18] Two examples of enterprise funds are the State Lottery and the Secretary of State's business services.

Additionally, there are a number of references present in Montana statutes related to establishing "fees commensurate with costs".[19] The fees received by these agencies are deposited in special revenue funds for the purpose of defraying costs of the program or service the agency is providing.[20] The implication being that an agency may not charge fees that exceed the cost of providing a service and must certainly not charge less, lest they risk running a deficit. The general language regarding agency fees may be seen as an implicit directive to account for both direct and indirect costs.

When it was clear that the Committee was interested in recommending a more universal use of full cost accounting by state agencies, the Department of Administration was asked to respond to whether the existing statewide accounting, budgeting, and human resources system (SABHRS) could be modified to incorporate the principles of full cost accounting for all state agencies. The Department did not suggest that SABHRS could not be modified, but representatives from the Accounting and Management Support Division cautioned that the centralized nature

[17] Minutes, Business, Labor, and Agriculture Interim Committee, April 19-20, pp. 12-14.

[18] Section 17-2-102(1)(b)(i)

[19] These references are most commonly seen in Title 37, Professions and Occupations, when licensing boards require user fees to finance the board's duties.

[20] Section 17-2-102(1)(a)(i)(A), MCA.

of many governmental agencies may not lend itself to an easy shift in accounting methodology.[21] Again, the key premise of full cost accounting is that direct costs, often easily accounted for, and indirect costs, or those costs that are shared among one or more programs or service units, must be aggregated in order to establish the true cost of a service. The actual isolation of governmental programs and the costs associated with delivering services may be the most significant hurdle for state agencies that are required to comply with a directive to implement full cost accounting.

[21] Minutes, Business, Labor, and Agriculture Interim Committee, April 19-20, 2000, pp. 12-14.

CHAPTER TWO

QUESTIONNAIRE ANALYSIS: ASSESSING THE SCOPE OF PUBLIC-PRIVATE COMPETITION

The Committee developed and circulated two questionnaires, one to private vendors and one to state and local governmental entities, to better assess the specific issues brought forward by private vendors concerned with governmental entities perceived to be competing for the vendors' business. The Committee received a combined 163 responses.[22] The questionnaires that were distributed were more of a situation assessment than a statistically significant analytical tool. Because the Committee could not control the sample size (nor did they wish too), the information provided by the respondents represented the general scope of the issue of unfair competition and a reaction to *possible* recommendations like full cost accounting, formal benefit-cost analyses, and managed competition. The Committee relied heavily upon a number of private sector business and special interest associations to distribute and inform their members of the Committee and its interim tasks. To facilitate a better response rate, the Committee provided the option to remain anonymous.

Both questionnaires contained several specific questions and a number of open-ended questions that provided respondents with an opportunity to offer additional information. The Committee was primarily interested in responses to three subjects:

1. direct public-private competition;

2. public sector and private sector entities offering similar services; and

[22]A copy of every response to the questionnaire may be obtained through the Legislative Services Division.

3. in the case of governmental respondents, the percentage of their activities were contracted to the private sector.

HIGHLIGHTS OF PRIVATE SECTOR RESPONSES

In response to whether similar services to the public are being offered by private sector providers and public providers, 61 businesses answered yes, and 44 replied that their services were not being offered to the public by governmental agencies.[23]

Although the results are not statistically significant, the percentage of private sector vendors responding yes to the question of direct competition between the private and public sector was split nearly evenly. Approximately 49 private sector businesses answered in the affirmative and 51 businesses stated that they were not in direct competition with the government.[24]

There were, however, certain business sectors that responded more frequently that they and the government were competing for the same customers. Those sectors were solid waste service providers and construction and engineering firms.[25] Solid waste and certain construction and engineering services are offered by both public and private sector providers. These two industries, and to a lesser degree telecommunications service providers and health and fitness centers, represent the bulk of the interest in the HB 515 study.[26]

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[23]Gordy Higgins, *Analysis of the Government Competition with Private Vendors Questionnaire*, March 1996, p. 10, in Minutes, Business, Labor, and Agriculture Interim Committee, March 2-3, 2000. Exhibit #12.

[24]Ibid., p. 11.

[25]Ibid., pp. 14, 18.

[26]Detailed information on the responses of health and fitness centers and telecommunications services providers, as well as other public and private entities, is contained in Exhibit #12, in Minutes, Business, Labor, and Agriculture Interim

Of the 14 solid waste providers returning the questionnaire, 10 replied that they were in direct competition with public providers, primarily local solid waste districts.[27] The following represents a summary of the comments made by the private solid waste service providers.[28]

- Inconsistent application of regulatory requirements between public and private providers.

- First and foremost, public providers do not pay taxes that private providers must pay. If public providers offer competing services, they should be required to pay taxes where private provider options are available.

- The greatest disadvantage comes from the government's ability to arbitrarily assess every property in a district without regard to their actual use of a service.

- Private solid waste services providers do not have access to a variety of subsidized loans and grants that are available to government providers.

- Different methods of billing create the impression that private providers are more expensive than government providers.

- Government providers can often acquire equipment at prices that are significantly lower than what a private provider has access to.

Committee, March 2-3, 2000.

[27]Gordy Higgins, *Analysis of the Government Competition with Private Vendors Questionnaire*, March 1996, p. 18, in Minutes, Business, Labor, and Agriculture Interim Committee, March 2-3, 2000. Exhibit #12.

[28]Ibid., p. 20.

The construction and engineering sector returned 24 questionnaires. Of those responding, 14 stated that they competed directly with public entities for construction and engineering projects.[29] Like the private solid waste providers, construction and engineering firms offered substantial information for the Committee to consider.

The general theme of the construction and engineering responses is the development of appropriate costing models that reflect the true cost of providing services. The construction industry responses note that it would be difficult to create conditions under which governmental entities can identify those costs. One respondent cautioned the Committee by saying that there are services that governments can provide more effectively and efficiently and urged the Committee to develop a sound model to identify those services.

Another recurrent theme was the issue of taxes. Those private sector businesses that responded stated that government entities that engage in construction activities do not pay taxes on equipment, fuel, or tires. One contractor responded that the private sector pays these taxes, as well as others, including the 1% contractor gross receipts tax on public projects.[30]

Several respondents shared a concern that, in their understanding, the government exempts itself from a requirement calling for the furnishing of performance bonds or special insurance policies. In line with this is the apparent disconnect between construction project inspection procedures. Contractors believe that the private sector is subject to regular review by independent parties and is responsible for the ensuing

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[29] Ibid., p. 13.

[30] Title 15, chapter 50, part 2, MCA, allows for the credit of the 1% gross receipts license fee on the contractor's corporation license tax or the contractor's income tax. Personal property tax and the fee in lieu of tax on certain vehicles may be credited against the 1% gross receipts license fee.

quality control costs, but that these same requirements are not applied consistently to government construction projects.

A final issue raised relates to the issue of the actual cost of projects, both how that cost is determined, as noted earlier, and how those costs are tracked throughout the life of the project. In essence, contractors claim that they must perform the work for the bid price and insulate taxpayers from cost overruns and contingencies that arise. Government contractors, on the other hand, are not under the same motivation to ensure that projects come in on time or on budget.

If there is a recommendation to be gleaned from the contractor responses, it may be this: require that costs associated with government projects be allocated like those of private projects. This would allow decisionmakers to treat both sectors consistently, which should result in a good service that is a good value to the state's taxpayers.

HIGHLIGHTS OF GOVERNMENT AGENCY RESPONSES

The Committee sought to determine, in a general fashion, how prevalent the use of contracted services is by agencies to deliver services to the public or provide services directly to the agency.[31]

The Department of Transportation informed the Committee that it contracts approximately 95% of its activities to the private sector, including major road work, vehicles and equipment, rest area maintenance, paint striping, aggregate production, and road oil and mix.

The Communicable Disease Control and Prevention Bureau of the Department of Public Health and Human Services estimates that 70% of the Bureau's expenditures take the form of contracted services. The

[31]Each agency response to the questionnaire may be obtained from the Legislative Services Division

Bureau contracts with the private sector, other public agencies, and nonprofit organizations to provide investigation, monitoring, and health education services.

The Department of Labor and Industry reported that in fiscal year 1998, approximately $3.6 million, or 3.5% of the Department's budget, was paid to private sector contractors for a variety of professional consulting services in the information technology arena. The agency has experienced problems in the past with recruiting and retaining qualified computer programmers. The only viable option was to contract with private sector experts, even though the Department felt that the cost of contracting the necessary services was higher than if they were to provide the service in-house.

The Department of Administration, General Services Division, contracts with private providers for approximately 85% of their required duties. Those contracts include janitorial services, Capitol Complex security, mechanical and elevator maintenance, pest control, and some design, construction, and repair services.

The Information Services Division reported that 75% of its $28 million annual budget is contracted to private vendors. The contracts include hardware and software products, data processing, and telecommunications services.

In the local government arena, privatization is becoming an effective tool in maintaining service levels in the face of declining revenue.[32] Dr. Jeffery Greene, Associate Professor at the University of Montana, studied the reasons that Montana counties and cities are turning to private providers rather than simply eliminating services or conducting

[32]Dr. Jeffery Greene, *Privatization Popular Among Local Governments*, Montana Business Quarterly, Winter 1999, p. 18.

them in-house.[33] Dr. Greene's findings suggest that Montana's local governments turn to privatization arrangements more often than a national sample of cities and counties surveyed by the International City Management Association.[34]

According to local government responses, the following services represent in-house services that can be normally obtained in the private sector:[35]

- solid waste services;
- water sample testing;
- park and trail maintenance;
- street maintenance;
- wastewater systems, water delivery systems, and sewer and storm drain maintenance;
- detention facilities;
- convention and recreational facilities;
- data processing and other software technical services;
- weed control; and
- ambulance services.

Prior to the conclusion of the March meeting, the Committee had been reviewing the activities of state and local government entities. Local government representatives, primarily the Montana Association of Counties and the Montana League of Cities and Towns, had provided, on a number of occasions, reasons for not including local government in a process to eliminate public-private competition or in any other policy

[33]Ibid., pp. 17-20.

[34]Ibid., p. 18.

[35]Gordy Higgins, *Analysis of the Government Competition With Private Vendors Questionnaire*, March 1996, p. 21, in Minutes, Business, Labor, and Agriculture Interim Committee, March 2-3, 2000. Exhibit #12.

decision made by the Committee.[36] The Committee members agreed that while they would still consider policy changes that affected local government operation, their primary focus would be on state government service delivery activities.[37]

Based on the survey responses, there is ample evidence that the state and local governments in Montana use private contractors to provide public services, thus engaging in a form of privatization and presumably averting the issue of public-private competition. That is not to say that government does not compete with the private sector for customers. In many areas, including solid waste, construction and engineering, health and fitness centers, certain telecommunications services, and others, private sector responses to the questionnaire reveal that there are examples where public and private sector providers compete for customers.

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[36]Minutes, Business, Labor, and Agriculture Interim Committee, November 12, 2000, p.15.

[37]Minutes, Business, Labor, and Agriculture Interim Committee, March 2-3, 2000, pp. 2-3.

CHAPTER THREE

WHAT GOVERNS FORMAL PRIVATIZATION DECISIONS IN MONTANA?

Before engaging in a process to develop an approach to formalize the decisionmaking steps to determine whether privatization was an appropriate method to increase program effectiveness and efficiency, the Committee briefly reviewed how privatization decisions are currently made.

Title 2, chapter 8, part 3, MCA, Privatization Plan Review, establishes the process by which privatization decisions are to be made.

Section 2-8-301(3), MCA, narrowly defines privatization as:

> *contracting with the private sector to provide services normally conducted directly by the employees of the agency if the contract displaces five or more current state employees (emphasis added)*.

Before an agency may contract with the private sector for services that displace public employees, it must first prepare a detailed plan and submit the plan to the Legislative Audit Committee which in turn conducts a public hearing and offers recommendations to the agency based on information the Legislative Audit Committee received during the hearing.

Section 2-8-303, MCA, sets forth the required elements of the privatization plan submitted to the Legislative Audit Committee. Principal items of the plan are:

> (b) detailed budget information that includes a list of expenditures for the 2 most recent fiscal years and the sources of revenue for the program . . .

(e) an estimate of the cost savings or any additional costs resulting from privatizing the program, compared to the costs of the existing, nonprivatized program. Additional costs must include the estimated cost to the state of inspection, supervision, and monitoring of the proposed privatization and the costs incurred in the discontinuation of such a contract.

(f) the estimated current and future economic impacts of the implementation of the plan on other state programs, including public assistance programs, unemployment insurance programs, retirement programs, and agency personal services budgets used to pay out accrued vacation and sick leave benefits;

(g) the estimated increases or decreases in costs and quality of goods or services to the public if the plan is implemented;

(h) the estimated changes in individual wages and benefits resulting from the proposed privatization . . .

By providing this information, the agency, with consultation from the Legislative Audit Committee, can tailor the plan to ensure that the quality and cost associated with the privatized service remains appropriate to the needs and expectations of the public service recipients.

Finally, section 2-8-304, MCA, provides for the regular review of programs that have been privatized to determine whether the service could be provided more cost-effectively by a public agency, or in the course of audits conducted by the Legislative Auditor, whether there are agency-provided services that could be provided more cost-effectively by a private sector provider. Additionally, in each odd-numbered year, the Office of Budget and Program Planning is required to submit a list of all state programs accounted for in an enterprise fund or internal service fund with a request to review at least two of the programs for privatization.

Because contracting is a method of using the private sector in government management and delivery of public services, an agency that uses contracts to fulfill its administrative responsibilities is engaged in privatization.[38] However, a literal reading of sections 2-8-301 through 2-8-304, MCA, suggests that if an agency uses contracted services to meet its objectives and does not displace public employees, no review of the privatization plan or operation is required.

A recent and highly publicized example of privatization through contracted services is the private prison operated by Correctional Corporation of America (CCA) in Shelby. In 1997, the Legislature provided the Department of Corrections with the ability to authorize and license a private sector provider to deliver incarceration services and required the Department of Corrections to develop information similar to that required by the privatization plan review. However, the Legislature chose to specifically identify private correctional facilities as a way to "encourage innovative methods to provide the correctional resources necessary to confine persons convicted of crimes".[39]

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[38]The Council of State Governments, *Private Practices: A Review of Privatization in State Government*, 1997.

[39]53-30-601, MCA.

CHAPTER FOUR

PRIVATIZATION DEFINED

The Committee requested and received a great deal of information about the process of privatization, including what factors contribute to successful privatization efforts. Also, the Committee explored the pros and cons of privatization to better understand the implications of pursuing a privatization scheme. Many sources contain virtually an identical list of facts and myths surrounding privatization efforts.

The term "privatization" generally conjures up a consistent theme, and it is important to outline the continuum on which the term can and has been used by policymakers. A review of the literature on privatization offers the following spectrum of definitions:

- Engaging the private sector to provide services or facilities that are usually regarded as public sector responsibilities.[40]

- Shifting from publicly to privately produced goods and services.[41]

- Transferring government functions or assets, or shifting government management and service delivery, to the private sector.[42]

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[40]Committee on Governmental Operations, Florida House of Representatives, *Privatization*, Final Report, December 1995, p. 9.

[41]Ibid.

[42]Ibid.

- Attempting to alleviate the disincentives toward efficiency in public organizations by subjecting them to the incentives of the private market.[43]

- Using the private sector in government management and delivery of public services.[44]

- Attainment of a public policy goal through the use of the private sector.[45]

- Hiring private businesses to produce public goods and services or to operate government programs.[46]

The methods chosen to implement a shift from publicly delivered services to privately delivered services are likely more important than how policymakers choose to describe privatization. The following table represents a variety of ways that privatization may be put into practice.

Methods of Privatization
Asset Sale The state sells or cashes out its assets to private providers to enlarge the tax base.
Contracting Out The state enters into agreements with private vendors to provide services. The state pays contractors to provide the services.

[43]Ibid.

[44]Ibid., p. 10.

[45]Dr. Jeffery Greene, *Privatization Popular Among Local Governments*, Montana Business Quarterly, Winter 1999, pp. 17-20.

[46]Robert Boerner, *Privatization of State Government Services*, NCSL LegisBrief, Vol. 6, No. 6, January 1998.

Deregulation	
	The state removes its regulations from the service previously monopolized by government in favor of private provision of the service and competition against government agencies.
Franchise	
	The state gives monopoly privileges to a private vendor to provide a service in a specific geographical area.
Grants and Subsidies	
	The state makes monetary contributions to help private vendors deliver a public service.
Private Donation	
	The state relies on private sector resources for assistance in providing public services. Private firms may loan personnel, facilities, or equipment to state agencies.
Public-Private Partnerships	
	The state conducts projects in cooperation with private vendors, relying on private resources instead of tax revenue.
Service Shedding	
	The state drastically reduces the level of a service or stops providing a service so that the private sector can assume the function with private sources.
Volunteerism	
	The state uses volunteers to provide public services.
Vouchers	
	The state allows eligible clients to purchase services available in the open market from private providers. As with contracting, the government pays for the services.

Compiled from: Practices: A Review of Privatization in State Government, Council of State Governments, 1997.

PRIVATIZATION CHECKLIST

In a survey conducted by the Council of State Governments, nearly 75% of the responding agencies and state officials did not use a formal or standard decisionmaking process to decide whether privatization of a particular service was in the best interest of the public service recipient.[47] Most of the respondents did agree that a standardized approach would be an important tool for policymakers to decide not only to move forward with alternative service delivery options but also to monitor and evaluate the success of the efforts.[48]

The following list represents a collection of questions that policymakers with privatization experience suggest should be answered before moving forward with any new initiative.

Privatization Decisionmaking
Initiation of the Privatization Project Who will begin the process; Governor, individual agencies, Legislative Branch, etc.?
Legal Barriers What, if any, are the legal issues associated with privatizing public service delivery systems?
Functions to be Privatized What kind of formal and consistent identification process should be established to review current in-house operations?
Goals and Criteria for Privatization What are the goals and who should be involved in establishing the goals and evaluation criteria?
Methods of Privatization Is the method of privatization static or dynamic?
Benefits of Privatization Are the benefits of privatization consistent for each chosen program or service?
Availability of Private Vendors Are willing and reliable vendors available to provide a service?

[47]The Council of State Governments, *Private Practices: A Review of Privatization in State Government*, 1997, p. 8.

[48]Ibid.

Risk and Cost Overruns What risks are present in a privatization effort? Are those risks contained in every effort? What policies and procedures are needed to address cost overruns?
State Employees How will state employees be affected by privatization efforts?
Request for Proposals Do the existing RFPs contain the necessary factors to effectively evaluate alternative providers?
Awarding of the Contract Are the existing laws adequate to address the awarding of contracts?
Cost Analysis Who should conduct the cost analysis?
Monitoring Who should monitor the private vendor? Is a monitoring program regularly conducted or is monitoring done on a case-by-case basis?
Performance Measurement How should the performance of a private vendor be measured? What provisions are needed to ensure contractor performance?

Compiled from: Practices: A Review of Privatization in State Government, Council of State Governments, 1997.

POTENTIAL RECOMMENDATIONS FOR SUCCESS

Given the complexity of implementing a unified privatization effort, a review of privatization literature seems to recommend that a thorough analysis be conducted to determine what conditions are present that could result in a less-than-efficient process. The following table highlights a number of recommendations collected from the experiences of other states and generally mirrors the privatization checklist necessary for making informed decisions.

Process Recommendations

Political Leadership and Support

Strong support from policymakers along with appropriate enabling legislation will offer greater guarantees that any widespread privatization effort is successful.

Clear and Measurable Goals

Establishing goals with accompanying performance measurements before engaging in privatization efforts helps success rates.

Delegation of Authority

Depending on what privatization method is used, decisionmakers must establish a clear description of the role of government agency employees (i.e., overseers v. doers).

Data Collection

Decide what entity will gather data for decisionmakers to address. This includes but is not limited to cost data, performance evaluation data, and preliminary cost-benefit analysis data.

Monitoring

A monitoring methodology must be developed and circulated to alternative providers to ensure that the expectations of decisionmakers are well-known and understood.

Evaluation

Establish a regular and consistent evaluation process based on the predetermined goals and objectives. Third party evaluators may be used.

Safeguards

Consider a pilot program before moving to fully implement a privatization effort. Develop transition plans in the event that a private provider is unable or unwilling to continue the delivery of services.

Competition in Management and Delivery of Services

Analyze the conditions present in the current service delivery methodology and decide whether a managed competition process between private and public sector service providers would yield positive results.

Employee Participation

Involve and inform employee organizations in the planning process. Consider any appropriate employee protection measures that may ease the transition to a private provider.

Cost Overruns

Include cost adjustment provisions in any contract.

Compiled from: Practices: A Review of Privatization in State Government, Council of State Governments, 1997.

ARGUMENTS FOR AND AGAINST PRIVATIZATION

It should come as no surprise that the issue of privatization has vocal supporters and opponents. Proponents contend that privatization should be used for cost savings and administrative expediency. At a minimum, privatization is a tool that should be explored when a government service provider does not have the necessary expertise or personnel or when the service provider needs to complete projects quickly. In general, these justifications refer to the belief that private sector organizations are less bureaucratic than government agencies and can make decisions more rapidly to assign the necessary resources where the greatest need occurs.

Arguments in favor of privatization:

C	Helps governments save money in management and delivery of public services.
C	Allows for speedy implementation of certain programs.
C	Provides high-quality services in some areas.
C	Becomes necessary when government lacks the expertise or personnel to carry out certain programs.
C	Uses more innovative approaches and technology.
C	Helps dissolve unnecessary government service monopolies.
C	Offers services more effectively due to flexibility and reduced red tape.
C	Slows the growth of government or downsizes government.
C	Introduces competition between government employees and private providers.
C	Provides an alternative to traditional ways of improving government productivity.

Compiled from: Private Practices: A Review of Privatization in State Government, Council of State Governments, 1997.

Opponents of privatization efforts suggest that cost savings, the primary reason for pursuing a privatization policy, is never a guarantee. Detractors of privatization also claim that service quality suffers because private providers focus their attention on profit margins rather than on providing a valuable service. The foes suggest that if cost savings is the goal, existing institutional systems should be strengthened to allow government to restructure itself into a more efficient and effective service delivery agent.

The arguments against privatization include:

C	Does not save taxpayers' money.
C	Compromises quality because of private vendor profit motive.
C	Lowers state employee morale and contributes to fear of displacement.
C	Destabilizes economically marginal communities.
C	Is unnecessary given other productivity approaches available to public service providers.
C	Private gain and public good do not always correspond.
C	Diminishes accountability of government.
C	Leads to corruption.
C	Does not guarantee market competition and can result in private monopolies.
C	Causes policymakers and managers to lose control over privatized services.

Compiled from: Private Practices: A Review of Privatization in State Government, Council of State Governments, 1997.

OTHER STATE EFFORTS

Montana is not alone in its investigation of determining the most effective and efficient method of delivering services to the public. At least 14 states have created commissions to address competition and privatization during the last 10 years, and dozens of local governments have pursued efforts to mitigate the issues associated with government agencies offering services that the private sector can normally provide.[49]

A brief investigation into a few states generated a reasonably consistent prescription for addressing policy issues associated with privatizing public service delivery systems. Of the three states that were chosen, Virginia, Michigan, and Texas, each seemed to represent privatization implementation processes that take into account the successful characteristics offered by the Council of State Governments and other entities studying privatization.

Virginia[50]

In 1995, the Virginia General Assembly created and passed the Virginia Government Competition Act. The Act was an extension of a number of recommendations arising from a government reform study. Additionally, the Act created the Commonwealth Competition Council, an independent, appointed body that is responsible for administering an inclusive program of service delivery reforms. The Council's mission is made up of nine specific goals.[51]

1. Examine and promote methods of providing a portion or all of select government programs through the private sector by a competitive contracting program and advise the Governor, the General Assembly, and Executive Branch agencies of the Council's findings and recommendations.

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[49]Robert Boerner, *Privatization of State Government Services*, NCSL LegisBrief, Vol. 6, No.6, January 1998.

[50]General Accounting Office, *Privatization: Lessons Learned by State and Local Governments*, Report to the House Republican Task Force on Privatization, 1997. (Additional information on the Commonwealth Competition Council can be found at: http://www.vipnet.org/ccc/home.htm)

[51]Section 9-342, Code of Virginia.

2. Develop an institutional framework for statewide competition within state government.

3. Establish a system to encourage the use of feasibility studies and innovation to determine areas in which competition could reduce government costs without harming the public.

4. Monitor the products and services of state agencies to bring an element of competition and to ensure a spirit of innovation and entrepreneurship to compete with the private sector.

5. Advocate, develop, and accelerate implementation of a program for state entities to ensure competition for the provision or production of government services, or both, from public and private sector entities.

6. Establish approval, planning, and reporting processes required to carry out the functions of the Council.

7. Determine the privatization potential of a program or activity; perform cost/benefit analyses; and provide for independent certification of the results of the comparison by the Secretary of Finance.

8. Devise, in consultation with the Secretary of Finance, evaluation criteria to be used in conducting performance reviews of any program or activity that is subject to a privatization recommendation.

9. To the extent practicable and to the extent that resources are available, make its services available for a fair compensation to any political subdivision of the Commonwealth.

The Council held a series of public hearings that focused on gathering information about recognizing efficiencies in service delivery. While the Act was not conceived as a remedy to public-private competition, it did develop a regular review process, assisted by a proprietary accounting methodology (Cost Comparison Program), to analyze which service provider, public or private, would offer the best service for the best value.[52] The Cost Comparison Program, known as COMPETE, assists decisionmakers in understanding the fully allocated cost of a state function, the activity cost of service units of output in a state function, and a neutral cost comparison between in-house service providers and private sector vendors. In broad terms, COMPETE is based on:

- personnel costs;
- materials and supply costs;
- fixed assets and depreciation;
- other costs, including rent, insurance, utilities, travel, interagency charges, and outside contractors; and
- overhead/indirect costs.

Besides the proprietary accounting program, the Council developed a lengthy list of policy alternatives under the general umbrella of privatization. By defining privatization as broadly as possible, the state found itself with a variety of options that met its goal of more efficient service delivery. The Council considers each of its policy options as being in one of four categories. The four categories are:

- Transferring ownership of government assets to the private sector.

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[52] In fact, the Act was designed in some part to spur competition between public and private sector vendors. The belief was that competition results in cost savings and greater efficiencies. However, the Virginia General Assembly also recognized that in order to effectively facilitate competition, a reasoned and fair comparison between the two primary providers was critical.

- Contracting with private sector vendors to provide services previously provided by government agencies.

- Involving the private sector in the financing and development of public capital improvement projects.

- Competition through either public-private, public-public, or private-private scenarios.

The primary action of the Council is to review agency-generated Public/Private Performance Analyses. Each analysis is divided into two levels. Level I includes a description of the potential for competition, an estimate of the cost of the activity to the government, and any policy considerations that address serving the safety and welfare of the public. Level II allows the agency to propose procedural plans and how the competition would be implemented.

While the Council does not require a government agency to engage in a privatization effort, they do make recommendations to the Governor and the Legislature about which services would ultimately be candidates for an alternative form of delivery. The process that the Council employs provides decisionmakers with timely information that facilitates informed decisions.

Michigan[53]

Michigan established its privatization framework, known as PERM, in 1992 by incorporating a set of procedures for analyzing government activities.[54] Initially, Executive Branch agencies in Michigan used a report

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[53]General Accounting Office, *Privatization: Lessons Learned by State and Local Governments*, Report to the House Republican Task Force on Privatization, 1997.

[54]PERM is the acronym for Privatized, Eliminated, Retained, or Modified.

written by the Public-Private Partnership Commission to choose functions or services that should be analyzed for their appropriateness under a privatization model.[55] Each analysis was accomplished using a three-part analytical model developed by the Department of Management and Budget. The three components used by the Executive Branch agencies are:

1. Historical analysis: identified the factors that caused government to become involved in the activity and whether those factors have changed. This phase also tracked the state's level of responsibility throughout its involvement.

2. PERM analysis: recommended whether the function should be privatized, eliminated, retained in its current form, or modified. This analysis included evaluating the potential effects of any recommendation on service recipients and other state activities. The agencies also studied potential barriers to achieving any recommendations that called for changing the manner in which services were delivered.

3. Cost analysis: prepared reports that accounted for the costs associated with delivering a service. Included within the cost analysis was an investigation of what costs an alternative service provider would incur.

Following the completion of the three-part analysis, the agency would decide what action it would take. The agency action was reviewed by the Department of Management and Budget and, if approved, implemented according to agency specifications.[56]

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[55] The Public-Private Partnership Commission was abolished in late 1992. Its functions were given to the Privatization Division.

[56] General Accounting Office, *Privatization: Lessons Learned by State and Local Governments*, Report to the House Republican Task Force on Privatization, 1997 p. 38.

Since 1995, most of the analysis concerning privatization has been conducted under the direction of the Privatization Division of the Department of Management and Budget and has focused on services that are duplicated with individual agencies. The Privatization Division reports its findings to the Governor's Office and the individual agency. If the Governor approves the recommendations, the plan is implemented. According to Michigan officials, most decisions calling for privatization can be implemented by the Executive Branch and do not need legislative approval.[57] When legislative approval is necessary, the appropriate statutory language is introduced.

Texas[58]

In 1995, the Texas Legislature created the Council on Competitive Government and charged it with identifying and determining services that government should not be performing. Put another way, the mission of the Council is to recommend areas in which government should focus its energies and resources on functions that it can provide efficiently and effectively. The Council is somewhat unique among similarly tasked bodies in other states in that the Governor, two other statewide elected officials, and the Speaker of the Texas House of Representatives serve as members.

The Council's main objective is to identify commercially available services being performed by state agencies and determine, through a cost accounting approach (similar to most other models reviewed), whether those services can be provided more effectively or efficiently by contracting for privatizing those services. Inherent within the Council's activities is the consideration that identifying a commercial service does not automatically trigger a privatization plan or contracting agreement.

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[57] Ibid.

[58] http://www.window.state.tx.us/ccg.

In fact, the Council has recommended that under the auspices of reorganization or reengineering, another state agency may be chosen to provide the service. It is assumed that if a service were subjected to reengineering, a cost analysis was conducted and the outcome showed that a public sector provider could meet the overall mission of improving public service quality.

An additional reason for highlighting the Texas experience is the fact that the Legislature's role in privatization policymaking concluded with the creation of the Council. Under the structure proposed, the Executive Branch had the ability to make service delivery changes without having first proposed those recommendations to the Legislature for possible statutory authorization.

CHAPTER FIVE

TYING IT ALL TOGETHER: TWO RECOMMENDATIONS

After significant Committee discussion of efforts adopted by other states and a close review of factors contributing to successful privatization efforts, the Committee settled on two major concepts that they believed to be appropriate for submission to the 57th Legislature.

The first concept dealt with the need to provide decisionmakers in the Legislature and the Executive Branch with more detailed information on the true cost of providing goods and services to the public and other governmental entities through the use of full cost accounting.

The second approach addressed the need to develop a mechanism that the Executive Branch could use to make decisions about core missions and resource allocation. Moreover, the mechanism designed by the Committee, a commercial services inventory, could allow the Legislature to recognize areas in which alternatives to publicly provided services should be reviewed and recommended.

LC0122

The Committee recommended the development of a full cost accounting pilot program for six agencies and two individual programs within the Department of Administration.[59] The six agencies chosen reflect a wide variety of funding sources, a combination of in-house and contracted services, and indirectly, at least, agencies that experience a significant amount of scrutiny during the appropriations process. The two individual programs chosen, the Information Services Division and the

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[59] The six agencies are: Department of Administration, Department of Commerce, Department of Corrections, Department of Environmental Quality, Department of Public Health and Human Services, and Department of Transportation.

Central Stores Program, within the Department of Administration, may be able to provide some additional insight into transitioning from current governmental accounting to a full cost accounting approach, based on the fact that each program accounts for its costs using principles contained in full cost accounting models.

As written, the bill draft requires each agency to choose programs based on legislatively-created criteria. Those agencies will provide regular reports and updates to the Business, Labor, and Agriculture Interim Committee during the 2000-2001 interim with the ultimate goal being a recommendation by the Committee to determine whether full cost accounting should be required for all state agencies, applied to specific agencies or programs, or abandoned as a method to determine true service costs.

LC0123

The second bill recommended by the Committee deals more directly with the issue of unfair government competition and the identification of services that may be suitable for privatization. Responding to a number of persons requesting that the Committee stop the creep of governmental agencies into the private sector, the Committee identified three specific policy provisions.

The first was the need to offer a forum for private sector businesses to, at the very least, raise the issue of unfair competition between public and private providers of similar goods and services. The second area was the need to establish a state policy that provided a preference to the private sector over the public sector when similar services are offered by both entities. The preference would be based in part on cost, but also on less easily identifiable factors such as the public's best interest. Finally, the Committee suggested that a list of agency activities that could be delivered by entities other than governmental agencies should be generated by the Executive Branch. Subsequently, the list would be reviewed by the Governor's Office, the Office of Budget and Program Planning (OBPP), and the Legislature.

A great deal of public testimony focused on the need to offer an opportunity for private sector businesses to approach state decisionmakers with concerns and issues related to public-private competition and to propose alternatives to current service delivery practices. The Committee believed that the interim process, restructured by SB 11, would provide a stable and consistent forum for the public to air their concerns and recommended that the Business, Labor, and Agriculture Interim Committee set aside an appropriate amount of time to continually monitor the issue of public-private competition.

Secondly, the bill as proposed requires that each state agency submit a "commercial services inventory" to a specific entity, depending on the decisionmaking authority, and to the Business, Labor, and Agriculture Interim Committee. The intent of the inventory is to allow agency administrators and the Legislature the chance to review whether services and programs the government provides are truly necessary or whether those services can be eliminated or transferred to the private sector.

In the case of the traditional state agencies, the inventory is provided to OBPP for their review and recommendations and to the Governor's Office for the Governor to make an administrative decision on whether the service should be continued, eliminated, or analyzed for privatization. The University System presents its commercial services inventory to the Board of Regents for a similar review. Once the Committee receives the commercial services inventory, it has the ability to initiate a number of actions, including recommending legislation to eliminate or privatize a specific service.

Finally, it was the Committee's intent to provide a preference to the private sector when considering who should deliver services. The decision would ultimately be based on a combination of cost factors, effects on service recipients, and the overall impact on the effective and efficient operation of government.

The Committee chose not to combine the two bill draft proposals, but recognized that each relies on the other to effectively address the issue of public-private competition and privatization. The process to reach decisions on the appropriateness of privatizing government services often begins with cost and concludes with less easily quantifiable factors such as value, quality, and public interest. The idea behind the two draft recommendations was to lay a foundation that future legislators and public administrators may use to begin to construct the framework for evaluating the most efficient and effective delivery of public services.

CONCLUSION

The Committee heard ample evidence suggesting that Montana state and local governments have privatized a number of their functions. The Committee was also informed that governments may not be doing enough to research and explore alternatives to in-house delivery of services. The task of resolving the issue of public-private competition boils down to measures of efficiency, effectiveness, and defining each sector's role in the delivery of public services, not to mention the fundamental role and purpose of government.

By instituting a full cost accounting pilot program for certain agencies, the Committee believed that on one level, questions related to private sector efficiencies through cost-effectiveness would finally be answered. Pairing full cost accounting with a serious and committed review of what services agencies are providing establishes a dynamic, yet consistent, process-oriented opportunity for the public and private sectors to stake out their individual territories, thereby, indirectly at least, defining the role of government.

As Representative Grinde predicted at the beginning of the interim, the Committee's work on HB 515 was indeed about philosophy: the philosophy that government should establish its role and develop methods to deliver quality services at a reasonable cost while allowing for private sector involvement when such involvement is both appropriate and necessary. The two recommendations offered by the Committee are intended to establish a process through which government identifies where alternatives to publicly provided services exist and creates meaningful policies that allow those alternatives to succeed.

SECTION TWO

Senate Joint Resolution No. 15: Study of the Current Level of Benefits Paid to Injured Workers and the Frequency of Indemnity Claims Under the Workers' Compensation Act.

(1) That the appropriate interim committee study the current workers' compensation benefit levels for permanent total, permanent partial, and temporary total indemnity claims and the frequency of claims for each lost time claim.

(2) That the appropriate interim committee provide a report to the 57th Legislature of the Committee's recommendations on whether any adjustment of workers' compensation benefit levels is advisable and its recommendations for reducing the frequency of all injury claims, with particular focus on reducing the high number of permanent partial indemnity claims.

CHAPTER ONE

INTRODUCTION

During the 1999 Legislative Session, two bills were introduced that would have revised benefits under the Workers' Compensation Act. Senate Bill No. 389, introduced by Senator Jon Ellingson, would have made substantial revisions to workers' compensation benefits. The bill would have:

! eliminated the requirement that an injured worker had to suffer an actual wage loss to receive workers' compensation benefits;

- increased benefits for temporary total disability (TTD) and permanent partial disability (PPD) by eliminating the limitation on maximum weekly benefits for TTD and PPD;

- revised the calculation for PPD benefits by increasing the adjustment factors related to age, education, wage loss, and labor activity that are added to the impairment rating;
- increased the PPD benefit period from 350 weeks to 500 weeks; and

- revised rehabilitation benefits by increasing the eligibility period from 104 weeks to 208 weeks, by allowing the injured worker to designate a rehabilitation services provider, and by requiring an insurer to pay the reasonable costs of the rehabilitation services provider.

The purpose of the bill was to restore many of the workers' compensation benefits that had been reduced since 1987 and to expand certain other benefits (e.g., rehabilitation benefits) that had been enacted since 1987. The fiscal note estimated that the provisions of the bill would increase workers' compensation system costs by about 55%. Because of time constraints, the estimate did not include a cost analysis for eliminating the criteria for PPD awards, for extending the rehabilitation benefit period from 104 weeks to 208 weeks, or for allowing the injured worker to choose the rehabilitation services provider. The bill was tabled by the Senate Business and Industry Committee.

Senate Bill No. 508, introduced by Senator Vicki Cocchiarella, proposed a more modest revision by increasing the number of weeks used for the calculation of a permanent partial disability award from 350 weeks to 400 weeks. The fiscal note indicated that the bill would have increased workers' compensation system costs by about 4%. Although the Labor and Employment Relations Committee tabled Senate Bill No. 508, it requested that a committee-sponsored study resolution be introduced to look at the workers' compensation benefits structure.

During executive action on Senate Bill No. 508, Senator Fred Thomas reflected on the current system of workers' compensation when he noted that Montana has high premium rates, low benefits, and more claims than other states. He suggested that the workers' compensation benefits should be examined.[60] The result of that suggestion was the introduction, by request of the Senate Labor and Employment Relations Committee, and passage of SJR 15 to study the current level of benefits paid to injured workers and the frequency of indemnity claims under the Workers' Compensation Act.

The resolution highlighted significant features of the workers' compensation system in Montana. First, premium rates and loss costs have fallen faster in Montana than they have in other states in the region.[61] Conversely, loss costs in Montana were 195% of the regional average. Second, Montana has the lowest maximum permanent partial disability benefit payment in the region, but it paid out 86% of the regional claim payment average for each 100,000 workers. Third, despite the decline in permanent partial disability claims, frequency of claims has been about twice the regional average. The higher frequency of claims has been attributed to the relatively higher proportion of high-hazard jobs in the Montana and limited opportunities for other types of employment.

At the Committee's November 12, 1999, meeting, Chairman John Hertel appointed a Workers' Compensation Subcommittee consisting of himself, Senator Dale Mahlum (Subcommittee chairman), Senator Debbie Shea, and Representative Carley Tuss.

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[60]Senate Committee on Labor and Employment Relations, Minutes (Helena: Montana Legislative Services Division, February 18, 1999), p. 20.

[61]Regional states include Arizona, Colorado, Idaho, Montana, New Mexico, Oregon, South Dakota, and Utah.

The next chapter presents a general overview of workers' compensation systems and the final chapter discusses Subcommittee activities.

CHAPTER TWO
PRIMER ON WORKERS' COMPENSATION

PURPOSE OF WORKERS' COMPENSATION

Workers' compensation is a combined governmental and private insurance program that provides benefits to most workers who suffer work-related injuries and disabilities. It is a "no-fault" system that compensates employees for their medical costs, a portion of their lost wages, and in some cases, costs of vocational rehabilitation. Such a system benefits both employers and employees. Employees benefit because a no-fault system ensures that injured workers are promptly compensated for their injuries. An injured worker is entitled to immediate coverage of medical costs and to the replacement of some portion of lost wages. Benefits do not include damages for pain and suffering or other noneconomic damages. Employers benefit because they are immune from lawsuit, except in the case in which an intentional action by the employer caused the employee's injury. Prior to the enactment of workers' compensation laws, an injured worker would have to prove that the employer's negligence contributed to the injury. An employer was not held responsible if the employer could show that the employee's own action contributed to the injury, if a coworker contributed to the injury, or if the employee knew of the risk associated with performing a task. These three rules of common-law defense made it difficult for employees to win cases against their employers.[62] On the other hand, the liability to the employer could be significant if an employee was successful in a lawsuit.

In exchange for limited liability for worker injuries, employers assume responsibility for situations in which they would have no liability under common-law principles. Employers are required to purchase insurance to

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[62]Peter M. Lencsis, Workers Compensation: A Reference and Guide (Westport, CT: Quorum Books, 1998), p. 7.

cover their potential workers' compensation liabilities. Premium rates for different categories of employment are determined based on actuarial analysis of expected losses or claims for each category. In exchange for exclusive remedy, employees accept limited benefits for their injuries. Despite the no-fault aspect of workers' compensation laws, an injured worker may sue third parties for contributory negligence and the employer for intentionally causing the injury. Litigation may also occur with respect to disputes related to benefits for permanent disabilities and to termination of temporary total disability benefits.

Many states expanded workers' compensation benefits during the late 1970s and early 1980s following the release in 1972 of The Report of the National Commission on State Workmens' Compensation Laws.[63] According to the report, there are five major objectives for a workers' compensation system:

- broad coverage of employees and of work-related injuries and diseases;
- substantial protection against interruption of income;
- provision of sufficient medical care and rehabilitation services;
- encouragement of safety; and
- an effective system for delivery of benefits and services.[64]

One of the major findings of the report was that workers' compensation benefit levels were too low to provide income continuity for injured workers. Because of the expansion of benefit levels, financial crises loomed in many states, including Montana, during the late 1980s and the early 1990s. Several factors contributed to rising costs:

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[63]Commerce and Economic Development Task Force, Workers' Compensation: A Guide for Policy Makers (Washington, D.C.: American Legislative Exchange Council, March 1999), p. 26.

[64]The Report of the National Commission on State Workmen's Compensation Laws (Washington, D.C., July 1972), p. 15.

- legislative actions expanded access to benefits;
- medical costs were rising rapidly;
- workers' compensation case and care management showed little innovation; and
- return to work and safety programs was not a high priority.[65]

Many states moved to streamline their systems by providing limits to the definitions of disability, scaling back cash benefits, using managed care to control health care costs, implementing return-to-work and safety programs, restricting workers' use of attorneys, and establishing a variety of antifraud and administrative changes.[66] In 1987, the Montana Legislature started on the long road to overhauling the workers' compensation laws.[67] One observer characterized the Montana workers' compensation system existing at the time as "too expensive, too litigious, and too unpredictable."[68]

COVERAGE

Workers' compensation laws generally cover all employers and employees. Exceptions from coverage may include certain corporate officers, employers with fewer than a specified number of workers, farm laborers, domestic and casual employees, independent contractors, or charity and volunteer workers. Coverage may be voluntary with respect to exempt employment. Montana provides several exemptions including domestic and casual employment, officials at amateur athletic events,

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[65] Commerce and Economic Development Task Force, op. cit., p. 3.

[66] Penelope Lemov, "The Workers' Comp Tug of War", Governing, Vol. 10, No. 4 (Washington, D.C.: Congressional Quarterly, Inc., January 1997), p. 24.

[67] For a history of changes to the workers' compensation system, see Eddye McClure, Legislative History of Major Workers' Compensation Legislation Affecting Benefits Levels and Claim Frequency, 1987-99 (Helena: Montana Legislative Services Division, December 1999), pp. 1-23.

[68] Bradley J. Luck, "The 1987 Amendments to the Montana Workers' Compensation Act--From the Employer's Perspective", Montana Law Review, Vol. 50, No. 1 (Missoula: School of Law, University of Montana, Winter 1989), p. 184.

real estate brokers and salespersons, direct sellers, barbers, sole proprietors, working partners, or working members of a limited liability company, tribal members, and petroleum land professionals. Coverage is mandatory for sole proprietors or partners, unless an exemption is sought.

BENEFITS

Workers' compensation systems have been in effect in the United States since the early part of the 20th Century. Those systems have evolved and expanded over time to provide basic benefit levels for most workers. There are common threads in the delivery of workers compensation benefits, but the goals that underlie each state's system make it difficult to generalize about specific features of workers' compensation systems. The Montana Legislature articulated the objective of the Montana workers' compensation system as a public policy of the state in section 39-71-105(1), MCA:

> It is an objective of the Montana workers' compensation system to provide, without regard to fault, wage supplement and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits are not intended to make an injured worker whole; they are intended to assist a worker at a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.

It is not an understatement to say that workers’ compensation laws are incredibly complex and vary widely among the states. The diversity in workers’ compensation systems makes it difficult to make meaningful comparisons between states. The task is further complicated by inconsistencies in the availability and reliability of system data. Some comparisons may be made, but at the risk of misinterpreting the results.

Workers' compensation is a system of separate but interrelated elements. Benefits include medical benefits, income or wage-loss benefits, and rehabilitation benefits.

Medical Benefits

As noted above, workers' compensation systems generally provide unlimited (in dollar amount) medical benefits. These benefits include the services of physicians, dentists, chiropractors, psychologists, and other health care professionals. Medical benefits also include the costs associated with hospitalization, diagnostic tests, medication, and other items. The choice of health care provider varies among the states. Fourteen states (e.g., Washington and Wyoming) allow employees to select the health care provider, and sixteen states (e.g., Idaho, Utah, and Colorado) allow the employer or insurer to choose. Twelve states, including Montana, allow the employee to choose the health care provider unless a managed care system exists.[69] Medical benefits may be restricted by a fee schedule for health care providers.[70]

Income Benefits

The second category of benefits is wage-loss benefits. An injured worker is entitled to receive cash benefits to replace lost income. Workers do not receive full wage compensation because income benefits are generally subject to maximum amounts. In addition, most state systems do not compensate an injured worker directly for pain and suffering. Benefits are paid according to the type of disability:

- temporary total disability (TTD);
- permanent total disability (PTD);
- temporary partial disability (TPD);
- permanent partial disability (PPD);

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[69]Commerce and Economic Development Task Force, op. cit., p. 16.

[70]Lencsis, op. cit., p. 52.

Most indemnity awards and the dollar amount paid are for either TTD or PPD benefits.[71] In Montana, PPD benefits accounted for 62% of the indemnity losses in premium year 1997, while TTD and PTD (including death benefits) each accounted for about 19%. In the regional comparison states (Arizona, Colorado, Idaho, New Mexico, Oregon, South Dakota, and Utah) identified by the National Commission on Compensation Insurance (NCCI), PPD benefits accounted for 65% of indemnity losses, while TTD (20%) and PTD (15%) accounted for the remainder.[72]

Temporary Total Disability

Temporary total disability benefits are paid when an employee is temporarily unable to work but is expected to eventually return to work. In most states, benefits are limited to a percentage of the worker's pretax wage at the time of injury subject to a statutory maximum amount. These benefits continue until the worker is able to return to work at or near the preinjury wage, has exhausted the statutory limitations on benefits, or has reached maximum medical healing (the worker's condition has stabilized, and further improvement is unlikely).[73] The table below highlights some of the similarities and differences for selected states in providing TTD benefits.[74]

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[71] U.S. Chamber of Commerce, 1999 Analysis of Workers' Compensation Laws, (Washington, D.C.: U.S. Chamber of Commerce, 1999), p. 33.

[72] NCCI, "Montana Workers' Compensation System Results", January 2000, p. 13.

[73] Commerce and Economic Development Task Force, op. cit., p. 15.

[74] Except for Iowa, the states include NCCI regional comparison states with Montana.

Table 1: Summary of Temporary Total Disability Benefit Provisions for Selected States, 1999				
State	Benefit rate (% of worker's wages)	Maximum weekly Payment	Maximum duration	Waiting period
Arizona	66 2/3	$328	Disability	7 days
Colorado	66 2/3	91% SAWW ($520)	Disability	3 days
Idaho	67	90% SAWW ($410)	Disability	5 days
Iowa	80% of after-tax earnings	200% SAWW ($947)	Disability	3 days
Montana	66 2/3	100% SAWW ($411)	Disability	6 days, 48 hours
New Mexico	66 2/3	85% SAWW ($392)	≥80% 700 weeks < 80% 500 weeks	7 days
Oregon	66 2/3	100% SAWW ($577)	Disability	3 days
South Dakota	66 2/3	100% SAWW ($408)	Disability	7 days
Utah	66 2/3	100% SAWW ($487)	312	3 days

Source: U.S. Chamber of Commerce, *Analysis of Workers' Compensation Laws*, 1999.
Note: Income figures in parentheses are the maximum amount allowed for TTD benefits.

The benefit rate in most states is equal to 66 2/3% of wages at the time of injury. The benefit rate in a few states (Alaska, Iowa, Maine, Michigan) is 80% of after-tax earnings. The 1972 National Commission on State Workermen's Compensation Law recommended that states use 80% of after-tax earnings as the basis for setting weekly TTD benefits and that the maximum weekly benefit be increased to 200% of the state average weekly wage (SAWW).[75] Benefits below these levels would be (presumably) inadequate. On the other hand, higher benefits could reduce return-to-work incentives.

Maximum benefit payments range from a fixed dollar amount (e.g., $700 in Alaska) to 200% of the statewide average weekly wage in Iowa. Twenty-four states provide a maximum weekly benefit payment equal to 100% of the statewide average weekly wage, while twelve states pay less than that amount and seven states pay more. Alaska, Arizona, California, Georgia, Minnesota, Nevada, and New York specify a fixed dollar amount as the maximum TTD benefit. Maine and the District of Columbia pay the greater of a fixed dollar amount or the average weekly wage. Minimum benefits (not shown in the table) vary considerably.

The waiting period before a worker is eligible for benefits ranges from 3 to 7 days. The waiting period in 23 states is 3 days, while the waiting period in 21 states is 7 days. Most states provide retroactive compensation for the waiting period if the disability continues for a specified time from the date of injury. Hawaii, Montana, Oklahoma, and Rhode Island do not have retroactive compensation provisions. The 48-hour waiting period in Montana applies to an injured worker who normally works a 12-hour shift.

Permanent Total Disability

Permanent total disability exists when a worker is considered as totally and permanently unable to engage in gainful employment. Benefits may be paid for the life of the injured worker. These benefits are generally

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[75] The Report of the National Commission on State Workmen's Compensation Laws, op. cit., p. 19.

subject to the same benefit rate minimums and maximums as TTD. Benefits paid to the injured worker may be offset by other benefits, such as social security payments, unemployment compensation, and employer-funded pensions. Some states provide additional benefits for dependents of the injured worker.

Temporary Partial Disability

Temporary partial disability benefits are generally provided when an employee has returned to work at less than full capacity and has not reached maximum medical healing. The benefits pay for the difference between the pre-injury wage and the post-injury wage. These type of benefits are generally subject to the same benefit rate minimums and maximums as TTD.

Permanent Partial Disability

Permanent partial disability benefits are designed to replace lost earnings of a worker who has attained maximum medical healing, but who is unable to attain preinjury economic functioning. The method of determining PPD benefits may vary significantly from state to state. Benefits for PPD are typically divided into "scheduled" and "unscheduled" disabilities. Most states have adopted maximum income benefits for specific scheduled injuries for a specified duration. Benefits for scheduled disabilities include payments for the loss or loss of use of an extremity (e.g., a hand, finger, arm, foot, or toe) or an eye and are generally paid regardless of postinjury earnings or earning capacity. Some states have scheduled benefits for loss of hearing. The amounts paid are set by statute and vary from state to state. For example, in 1999 a worker in Idaho who lost a hand would be entitled to 270 weeks of benefits at $251 a week ($67,716). The number of weeks is proportionately reduced by the degree of impairment. A 10% loss of the use of a hand would entitle a worker to 27 weeks of benefits. In New Mexico, a worker who suffers a similar loss (of the dominant hand) would be entitled to a maximum of $392 a week for 125 weeks

($49,006). In most jurisdictions, the actual amount payable is a specified number of weeks of benefits (based on the extremity involved) multiplied by the weekly benefit amount (based on earnings at time of injury).[76]

Several states (Alaska, Florida, Kentucky, Montana, Nevada, Vermont, and Wyoming) do not pay scheduled amounts for loss of an extremity. In Montana, the duration of payments is determined by the percentage of impairment times 350 weeks. Age, education, wage loss, and type of labor are factored into the percentage of impairment.

For injuries to the head, trunk, back, and internal organs, all states (except Minnesota) have developed a system of nonscheduled benefits that are calculated differently than scheduled benefits. The Workers' Compensation Research Institute (WCRI), in a study of interstate differences of PPD benefits, classified states according to the methods used by the states to calculate nonscheduled benefits. States use one of four methods to determine PPD benefits:

- Impairment-based method: permanent partial disability is rated only on the basis of the assessment of the injured worker's physiological or psychological condition.

- Loss-of-wage-earning-capacity method: the disability rating depends on a number of factors that vary on a case-by-case basis. Those factors may include the worker's age, education, and work experience and labor market conditions. The worker's rating (based on a one-time evaluation) is used to predict the impact of the injury on the worker's future income or ability to earn.

- Wage-loss method: permanent partial disability benefits are based on actual wages lost because of the work-related injury. The

[76]U.S. Chamber of Commerce, 1999 Analysis of Workers' Compensation Laws (Washington, D.C., 1999), p. 33.

wage-loss ratings are reviewed periodically and can be changed to reflect the worker's earnings or ability to earn. Generally, if there is no wage loss, then there is no benefit.

- Bifurcated method: The assessment of the disability is a function of the worker's earnings or labor market status at the time of injury. If the worker's earnings are at or near to the preinjury wage, the rating is based on the degree of impairment. On the other hand, if the worker has reached maximum medical healing and has not returned to work or is working at a reduced wage, the rating is based on earning capacity.[77]

According to the WCRI study, **impairment-based** PPD benefits are similar to scheduled benefits in that both are based on the severity of the impairment, not on the actual or projected loss of earnings. The more severe the impairment, the larger the benefit. Benefits are based on the impairment rating that is converted to a specific number of weeks or a specific amount of money. Like scheduled benefits, impairment-based benefits tend to provide adequate compensation on average to replace lost earnings.[78] Eighteen states and Washington, D.C., have adopted the impairment system for determining unscheduled benefits. Colorado and Nevada use a formula that reduces benefits for each additional year of age.[79] Of the National Commission on Compensation Insurance comparison states with Montana, Colorado and Utah base benefits on impairment.

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[77]Peter S. Barth and Michael Niss, Permanent Partial Disability Benefits: Interstate Differences (Cambridge, MA: Workers' Compensation Research Institute, September 1999), pp. 8-9.

[78]Ibid., p. 9.

[79]Ibid., p. 16.

Loss-of-wage-earning-capacity systems attempt to estimate the impact of an injury to a worker's future earnings. In addition to impairment, the disability rating may factor in a variety of economic and demographic characteristics, including the worker's age, education, and training and labor market conditions.[80] Disputes may arise on the degree of future earnings loss. Thirteen states have adopted the loss-of-wage-earning-capacity method. The NCCI comparison states that have adopted this method include Idaho, New Mexico, and Oregon.

Under the **wage-loss** method, benefits are paid until the worker returns to work at or near the preinjury wage. Under a pure wage-loss system, benefits could extend for the duration of the disability. On the other hand, a worker who does not experience a wage loss may not be eligible for PPD benefits, regardless of the extent of the injury. North Dakota pays unscheduled PPD benefits to workers who do not have a wage loss if the impairment rating of the worker exceeds 15%.[81] Ten states use the wage-loss method, none of which are NCCI comparison states.

The **bifurcated** approach uses a combination of methods to determine unscheduled PPD benefits. Under this scheme, the status of the worker is the basis for the determination of benefits. If the worker has returned to work at or near the preinjury wage, the worker is rated for benefits based on the degree of impairment. Conversely, a worker who has not returned to work or whose wage is a specified amount below the preinjury wage is rated for benefits based on the extent of the disability.[82] A small digression: "impairment" refers to changes in an individual's physical or mental health as a result of an injury, while "disability" refers to changes in an individual's ability to meet personal,

[80] Ibid., p. 11.

[81] Ibid., p. 18.

[82] Ibid., p.12.

social, or occupational demands as a result of an injury.[83] Eight states (Alabama, Arkansas, Kansas, Kentucky, Montana, North Carolina, Tennessee, and Wisconsin) and Washington, D.C. are classified as "bifurcated" states.

The following table compares unscheduled permanent partial disability benefits for the NCCI comparison states and selected bifurcated states.

[83] Ibid., p. 4.

Table 2: Summary of Permanent Partial Disability Benefit Provisions for Selected States, 1999				
State	Benefit rate (percent of wages)	Minimum weekly payment	Maximum weekly payment	Maximum duration in weeks (nonscheduled)
Alabama	66 2/3	27 1/2% SAWW	$220	300
Arizona	55% of average monthly wage	--	$328	Duration of Disability
Colorado	66 2/3 AWW	$150 per week	50% SAWW (see text below)	400
Idaho	55%	--	55% SAWW ($251)	500
Iowa	80% of employee's average weekly spendable earnings	35% SAWW or workers spendable earnings if less	184% SAWW ($872)	In proportion to PTD subject to 500 week limit
Kentucky	66 2/3	--	75% SAWW ($365)	520
Montana	66 2/3	--	50% SAWW ($205)	350
New Mexico	66 2/3 (scheduled) % determined by court (nonscheduled)	$36 or WAWW if less	85% SAWW ($392)	700
Oregon	See text below			
South Dakota	66 2/3	50% or WAWW, if less none	100% SAWW ($408)	312
Tennessee	66 2/3	15% SAWW	100% SAWW ($513)	400
Utah	66 2/3	$45 plus $5/dependant	66 2/3 SAWW ($325)	312
Wisconsin	66 2/3	$30	$184	1,000

Source: CAlliance, *Survey of Workers Compensation Laws*, 1999. For dollar amounts in parentheses: AFL-CIO, *Workers' Compensation Under State Laws*, 1999.

The table is indicative of the interstate similarities and differences in providing unscheduled PPD benefits. As is the case for TTD, the benefit rate for most states is equal to 66 2/3% of the worker's wages at the time of injury. The maximum benefit payments exhibit considerable variability among the states with maximum PPD benefits generally less than maximum TTD benefits. Nationwide, 10 states provide a maximum weekly benefit payment equal to 100% of the statewide average weekly wage, while 14 states pay a lesser percentage and 4 states pay more. Seven states pay a maximum fixed dollar amount, and the remainder of the states use a combination of a fixed dollar amount and some measure of the average wage. According to figures compiled by the AFL-CIO, Wisconsin ($184) has the lowest maximum PPD benefit payment of any state, followed by Ohio ($189), Montana ($205), Oklahoma ($213), Alabama ($220), and California ($230).

The maximum duration of benefits also exhibits considerable variability among states. The actual duration for a particular worker in a particular state may depend on a number factors, including the degree of impairment or disability and the interaction of PPD benefits with other benefits received under the state's system. For example, New Mexico has a two-tiered duration of benefits system. If a worker’s disability rating is below 80%, then the maximum duration of benefits is 500 weeks. Thus, a worker with a disability rating of 50% would be entitled to 250 weeks of benefits. If a worker's disability rate is 80% or more, then the maximum duration of benefits is 700 weeks. In Colorado, an injured worker with an impairment rating of 25% or less may not receive more than $60,000 from combined TTD and PPD payments. An injured worker with an impairment rating of greater than 25% may not receive more than $125,000 from combined TTD and PPD payments

Oregon is one of a few states that does not base PPD scheduled or unscheduled benefits on the worker's preinjury wage. Unscheduled benefits are determined on the basis of impairment and loss of wage-earning capacity. Adjusted age and education "modifiers" are added to the impairment rating (whole-person valuation of 320 degrees). Nonscheduled PPD benefits are then calculated on a three-tiered additive rate depending upon the degree of disability.

CHAPTER 3
STUDY ACTIVITIES

FIRST MEETING OF THE SUBCOMMITTEE

The Subcommittee met December 3, 1999, to consider different perspectives on SJR 15 and to discuss the direction of the study. Senator Vicki Cocchiarella, member of the Senate Labor and Employment Relations Committee and cosponsor of the resolution, provided a brief synopsis of changes to the workers' compensation system since 1985. She highlighted a variety of cost containment and revenue enhancement provisions designed to improve the stability of the system. She said that there are several reasons for the study. These would include finding out why partial disability payments in Montana are higher; determining an appropriate level of benefits for injured workers; and analyzing whether low benefit levels in Montana may jeopardize exclusive remedy.

The Subcommittee also heard from a variety of interested stakeholders, including employer and employee groups, insurance carriers, the Department of Labor and Industry, and the Montana Trial Lawyers' Association. Each representative offered an assessment of the current situation facing the workers' compensation system and recommended a variety of options for the Subcommittee's consideration.

The Subcommittee recognized that while SJR 15 raised a number of specific questions, it would be difficult to isolate any one component of the workers' compensation system for research and analysis. The Subcommittee directed staff to incorporate the questions and recommendations raised during the meeting into a proposed study plan for discussion at the next meeting.

SECOND MEETING OF THE SUBCOMMITTEE

The Subcommittee held its second meeting on January 13, 2000. The purpose of the meeting was to evaluate background information about Montana's workers' compensation system and to consider the study plan. Eddye McClure, staff legal adviser, presented a legislative history of significant changes to the workers' compensation system since 1987. As noted earlier, the first major reform to the system occurred in 1987. The impetus for reform was that the system was “too expensive, litigious, and unpredictable”. Legislation enacted in 1987 affected benefit levels and frequency of claims filed by injured workers. Some of the major changes enacted since 1987 include:

- a freeze in benefit levels (1989 Special Session);

- changes to permanent partial disability and rehabilitation benefits and eligibility for temporary disability benefits (1991 Session);

- an increase in the employer payroll tax and imposition of payroll tax on employees to reduce unfunded liability ("old fund") of the State Fund (1993 Session);

- the enactment of the Montana Safety Culture Act, provisions for medical cost containment under managed care and preferred providers (1993 Session);

- the creation of fraud investigation and prosecution office in the Department of Justice and a fraud prevention and detection program in the State Fund (1993 Session);

- changes to permanent partial disability benefits by defining "actual wage loss", by revising definitions of "disabled worker" and “rehabilitation benefits”, and by revising lump-sum conversions (1995 Session);

- a provision that lump-sum settlements are discounted to present value of benefits (1995 Session);

- the termination of the old fund liability tax as soon as the old fund became actuarily sound (1997 Session); and

- a revision to the rates set by the State Fund and the elimination of the 20% surcharge on high-loss employers (1999 Session).[84]

Jerry Keck, Administrator, and Diana Ferriter, Mediator, Employment Relations Division, Department of Labor and Industry, summarized the effects of the changes to the workers' compensation system on injured workers by type of benefit.[85] The analysis compared benefits from three different dates of injury that corresponded to significant changes in workers' compensation law: FY1988 to FY1991, FY1992 to FY1995, and FY1996 to FY2001.[86] The analysis was based on the same worker with the same type of injury. Benefits were determined for a worker earning minimum wage, a worker earning $7 an hour, a worker earning and $10 an hour. Changes in benefit levels were calculated for temporary total disability, temporary partial disability, and permanent partial disability, including changes in rehabilitation benefits. The report also described changes in medical benefits and permanent total disability benefits.

Mike Taylor, State Relations, National Council on Compensation Insurance, presented a report on Montana's workers' compensation

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[84]Eddye McClure, Legislative History of Major Workers' Compensation Legislation Affecting Benefit Levels and Claim Frequency, 1997-99. (Helena, Montana Legislative Services Division, December 1999) pp. 1-23

[85]Jerry Keck and Diana Ferriter, "Overview of Workers' Compensation Benefit Structure", (Montana Department of Labor and Industry: January 13, 2000), Workers' Compensation Subcommittee, Minutes, January 13, 2000, Exhibit #2.

[86]Changes to workers' compensation laws typically apply to injuries that occur on or after July 1 of the year of enactment.

system.[87] It provided more recent information than that contained in a similar report presented to the Montana Legislature in January of 1999. The report indicates that there has been considerable improvement in the state's workers' compensation system over the last several years. For example, the ratio of average premium rates to loss costs have declined from 265% of the regional average in 1994 to 187% of the regional average in 1999 (compared with 195% of the regional average in 1998). Total medical and indemnity claims for all types of disabilities (exclusive of claims filed by injured workers of self-insured employers) increased by only 1% between 1994 and 1997 (from 22,020 to 22,264), while total indemnity claims fell by 2% over the same period (from 4,417 to 4,340). In addition, total permanent partial disability costs (medical costs and indemnity claims) per 100,000 workers fell by about 35% in Montana compared with a 16% reduction in the region.

Mr. Taylor said that while Montana has improved relative to the rest of the region, higher costs, low wages, and a higher proportion of hazardous jobs continue to exacerbate Montana's workers' compensation system. On the other hand, there is, according to Taylor, a trend away from high-hazard employment to more service-based employment.[88] He also noted that Montana's employment has increased faster than claims, indicating that safety programs are having a positive effect.

Subcommittee staff presented the study plan. The major elements of the plan included the following:

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[87] "Montana Workers' Compensation System Results", (National Council on Compensation Insurance, Inc.: January 2000), Minutes, Exhibit #3.

[88] Mike Taylor, Workers' Compensation Subcommittee, Minutes, January 13, 2000, p. 4.

- review the structure of the current workers' compensation system and, to a lesser extent, the provisions of the Occupational Disease Act;

- examine the major legislative changes to the workers' compensation system since 1987;

- compare and contrast reform efforts that revised workers' compensation benefits in Montana and other states;

- evaluate the historical performance of the workers' compensation system, including costs and premium levels, for each insurance plan (self-insured employers, employers insured by a private insurance carrier, and employers insured by the State Fund) to the extent possible;

- quantify workers' compensation benefit levels for permanent total, permanent partial, and temporary total indemnity claims and the frequency of claims for each lost time claim;

- consider methods to reduce frequency of all injury claims;

- quantify system benefits and costs associated with changes to workers' compensation provisions; and

- develop options, if options are considered necessary, to revise the workers' compensation system in Montana, with attention focused on direct and secondary effects that any option might entail.

Senator John Hertel observed that economic activity in the state is increasing and that the worker's compensation system is achieving stability. He questioned whether the workers' compensation system is in a state of crisis.

George Wood, Montana Self-Insurers' Association, warned the Subcommittee that a short-term study may not achieve the desired results. He pointed out that the workers' compensation system is very complicated and any change to the system may have unintended consequences. He suggested that the Subcommittee review whether existing benefits are adequate or whether benefits existing prior to major legislative changes are more appropriate.

Although the Subcommittee did not formally approve the study plan, Chairman Mahlum said that the Subcommittee should focus on the major study topics.

Finally, Representative Carley Tuss was concerned that the existing benefit levels are so low that a legal challenge to the benefits could imperil exclusive remedy in Montana. The Subcommittee requested that staff prepare for the March 2, 2000, meeting an analysis of court decisions focusing on the question of whether there is any evidence that Montana's exclusive remedy is in jeopardy as a result of the level of benefits paid to injured workers.

THIRD MEETING OF THE SUBCOMMITTEE

The Subcommittee held its third meeting on March 2, 2000. Jeff Martin, Subcommittee staff, presented a primer on workers' compensation (see Chapter Two). The primer is intended to serve as a educational tool for the Subcommittee as well as for the 57th Legislature. The primer includes a comparison of benefit levels in selected states.

Jerry Keck, Department of Labor and Industry, provided additional information on interstate comparisons of benefit levels.[89] The report provided information on the regional comparison states as well as several states (Alabama, Arkansas, Kansas, Kentucky, North Carolina, Tennessee, and Wisconsin) whose workers' compensation systems are similar to Montana's. The report showed, among other things, that Montana provides the second lowest (only South Dakota is lower) average indemnity payment for permanent partial disability on closed and settled claims.

Eddye McClure, staff legal adviser, discussed The Montana Workers' Compensation Act and the Applicability of the Exclusive Remedy Rule. She concluded that legislative changes to workers' compensation benefits may be made on the basis "other than a belief that a Montana court is on the verge of eliminating the exclusive remedy rule based solely on the level of workers' compensation benefits paid to injured workers."[90] The significance of the conclusion is that the adequacy of existing benefits is not likely to be challengeable in court. If the Montana Legislature should decide to enhance benefit levels, it may be motivated by a consideration other than a fear that exclusive remedy is in jeopardy.

Ms. McClure told the Subcommittee that the Montana Supreme Court had recently revised the standard of employer liability. In Sherner v. Conoco, Inc., the Court decided that Montana's workers' compensation law "does not require that an injured worker prove that an employer intentionally harmed him, but only that the employer's act of omission

[89] Jerry Keck, "Workers' Compensation Benefits: Indemnity Payment Comparisons", (Montana Department of Labor and Industry), Workers' Compensation Subcommittee, Minutes, March 2, 2000, Exhibit #2.

[90] Eddye McClure, The Montana Workers' Compensation Act and the Applicability of the Exclusive Remedy Rule, (Helena: Montana Legislative Services Division, February 2000), p. 15.

causing the injury was intentional and malicious."[91] She concluded that the Court has put employers on notice that they cannot put their employees in a dangerous situation and hide behind exclusive remedy.[92]

Public reaction to the Sherner decision was mixed. George Wood, Montana Self-Insurers Association, said that employers will likely have to increase their liability insurance coverage. He was also concerned about the dichotomy with respect to exclusive remedy that the decision has created: negligence on the part of the employer may result in a cause of action against an employer, while negligence on the part of an employee results in benefits under workers' compensation as well as benefits from a civil action.[93] Webb Brown, Montana Chamber of Commerce, expressed concern that the Sherner decision represents a serious threat to Montana businesses.[94] Larry Jones, Senior Attorney, Liberty Northwest said that insurance companies will be unlikely to provide coverage for "intentional malicious conduct". Montana businesses are at risk, according to Mr. Jones, because of the low standard set in Sherner.[95] Al Smith, Montana Trial Lawyers' Association, said that Sherner is not as significant as has been portrayed because an injured worker would have to prove "a very high probability of negligence".[96]

Ms. McClure suggested that employers should request that the Department of Labor and Industry conduct a safety inspection of their places of work. That suggestion led to a general discussion of the Department's safety inspection responsibilities. It is worth providing

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[91] McClure, Ibid., pp. 9-10.

[92] Workers' Compensation Subcommittee, Minutes, March 2, 2000, p. 3.

[93] Ibid., p. 4.

[94] Ibid., p. 5.

[95] Ibid., p. 6.

[96] Ibid., p. 6.

some detail of that discussion because one of the recommendations of the Subcommittee is to increase the Department's safety inspection capabilities.

Jerry Keck said that the Department is required to conduct safety inspections of all public employers under the Montana Safety Act (Title 50, charter 71, MCA). The federal Occupational Health and Safety Administration (OSHA) has authority to conduct safety inspections of private employers. OSHA has contracted with the Department to conduct voluntary, onsite inspections of private employers. If an inspector finds a safety hazard, a voluntary agreement is made with the employer to remedy the hazard. Although the Department may not impose fines or penalties for safety violations, it may close a business if a hazard presents an imminent danger to public health and safety. The Department is prohibited from reporting employer noncompliance to OSHA. Mr. Keck said that the Department conducts about 200 voluntary safety inspection of private employers each year. Priority is given to high-hazard employers.[97]

At the December 13, 1999, Subcommittee meeting, stakeholders presented a variety of topics for the Subcommittee to consider in the course of the SJR 15 study. Because many of these topics were outside the scope of the study, the Subcommittee requested that stakeholders discuss priority issues that the Subcommittee should consider concerning adequacy of benefits and frequency of injury claims as they relate to the SJR 15 study.

Pam Egan, AFL-CIO, presented a labor perspective of priority issues, essentially a list of problem areas within the workers' compensation system. The list included the following items:

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[97]Workers' Compensation Subcommittee, Minutes, March 2, 2000, pp. 6-7.

- Adequacy of benefits
  - remove average weekly wage cap;
  - restore additional measures of disability in permanent partial disability;
  - raise permanent partial maximum to 500 weeks;
  - include calculation for loss of earning capacity;
  - eliminate time limit on rehabilitation benefits to allow restoration of worker's earning capacity;
  - allow worker to choose rehabilitation provider; and
  - require insurers to pay attorney fees when medical benefits inappropriately denied.

- Frequency of lost-time injury claims
  - enhance workplace safety;
  - enforce Safety Culture Act;
  - develop effective incentives for safety; and
  - Sherner may create financial incentive to maintain safe workplaces.[98]

Ms. Egan told the Subcommittee that the AFL-CIO cannot easily identify priority issues because the structure of the system does not lend itself to a simple priority list. She said that the absence of reliable statistical information impedes analysis of benefits received and economic hardship as the result of injury. In particular, high-wage employees are significantly impacted by low benefits and these may result in other public costs. She also said that interstate comparisons are not meaningful because that is comparing one inadequate system with another.

Riley Johnson, National Federation of Independent Businesses, recommended that the Subcommittee continue its work through the next

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[98] Ibid, Exhibit #4

interim so that a comprehensive examination of the workers' compensation system can be undertaken. He reminded the Subcommittee that the system is extremely complex and suggested that changes to the system absent full understanding of the impacts could create additional problems.

Webb Brown, Montana Chamber of Commerce, said that legislative changes to the system have made it more stable and predictable. He said that interstate comparisons provide useful information because Montana is competing with those states.

FOURTH MEETING OF THE SUBCOMMITTEE

The Subcommittee held its fourth meeting on June 23, 2000. Subcommittee staff had met March 14, 2000, with representatives of the State Fund, the Department of Labor and Industry, and NCCI to discuss conducting a comprehensive survey of the regional states and states with similar systems (i.e., bifurcated approach, see Chapter Two) to Montana to identify benchmarks for benefit levels. The Department agreed to conduct the survey. The goals of the survey were to:

- develop specific scenarios so results may be adequately compared;
- use survey results to identify benchmarks for benefit levels;
- compare Montana's benefit levels with the benchmarks; and
- provide a format in which areas of concern may be discussed and recommendations may be considered.[99]

The survey was sent to eighteen states, including NCCI regional states (Arizona, Colorado, Idaho, New Mexico, Oregon, South Dakota, and

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[99]Jerry Keck, "Other States Benefit Survey--Comparison with Montana", (Montana Department of Labor and Industry: June 23, 2000), p. 4, Workers' Compensation Subcommittee, Minutes, June 23, 2000, Exhibit #1.

Utah), states wherein the workers compensation system is similar to Montana's (Alabama, Arkansas, Kansas, Kentucky, Montana, North Carolina, Tennessee, and Wisconsin), and state-fund-only states surrounding Montana (North Dakota, Washington, and Wyoming). The survey specified a claimant profile (35 years old, high school graduate, construction worker, no dependents, and unable to return to time-of-injury employment) and the type of injury (lower back, 10% impairment rating). The claimant is working at minimum wage after the injury.

Four scenarios were examined based on the claimant's time-of-injury hourly wage of $5.15, $7, $10, or $20. Each state calculated the total benefits that would be paid for total temporary disability and permanent partial disability, with and without retraining benefits. Mr. Keck presented the results of the survey at the June meeting. The following highlights the findings of the survey:

Table 1: Interstate Comparisons of Workers' Compensation Benefits				
Benefits	$5.15/hour	$7.00/hour	$10.00/hour	$20.00/hour
TTD & PPD Benefits, Without Retraining				
Montana	$8,378	$21,188	$32,964	$37,081
Average of other states	$13,120	$21,317	$33,834	$55,584
Montana as % of average	64%	99%	97%	67%
TTD & PPD Benefits, With Retraining				
Montana	$8,378	$30,800	$42,105	$62,688
Average of other states	$24,164	$36,742	$56,351	$87,470
Montana as % of average	35%	84%	75%	72%

Source: Montana Department of Labor and Industry, "Other States Benefit Survey", June 23, 2000.

Total benefits paid, without retraining, in Montana compare favorably with other states for injured workers whose time of injury wage is between $7 and $10 an hour, but not so favorably for injured workers whose wage is on the lower end or upper end of the wage scale. The level of benefits is a function of the benefit rate, the maximum weekly payment, and the duration of benefits. Table 1 and Table 2 in Chapter Two indicate the interstate differences in these variables.

The tables also show that in Montana the total benefits of a minimum wage worker in Montana are the same with or without retraining. The minimum wage worker does not qualify for rehabilitation benefits under Title 39, chapter 71, part 10, MCA, because the worker does not have an actual wage loss as the result of an injury. For other benefit totals, there is no loss of wage after retraining.

The survey also asked whether the state's workers' compensation system required an injured worker to make a copayment for the cost of medical services and whether insurers paid for travel costs to medical providers. Of the 18 survey states, only Montana requires a copayment. However, the copayment may not exceed $10. An insurer in Montana is not required to pay for travel costs unless the insurer requests that the injured worker see a particular medical provider. All of the other states pay for travel costs. North Dakota limits payments to trips that are more than 50 miles one-way or that total more than 200 miles in a month.[100]

At the March 14 meeting, Subcommittee staff also asked Mike Taylor, NCCI, to estimate the system costs related to a number of changes in benefits. The first change would be to revise the weekly permanent partial disability rate from 66 2/3% of the injured worker's wages received at the time of injury to 80% of after-tax income, or disposable income. According to a report by the American Insurance Association, using disposable income rather than total wages maintains return-to-work incentives by avoiding overcompensation and provides "greater consistency of effective wage replacement without regard to different income levels".[101] Mr. Taylor informed the Subcommittee that, in general, the overall system impact of using 80% of disposable income would be negligible.[102]

The second change related to incremental increases in the maximum weekly benefit for permanent partial disability. Under current law, the maximum weekly benefit may not exceed one-half of the state's average weekly wage (39-71-703(6), MCA). Increasing the maximum benefit to

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[100] Ibid., p. 21.

[101] American Insurance Association, AIA Policy on Workers' Compensation Indemnity Benefit Design, February 5, 1996, p. 2, Workers' Compensation Subcommittee, Minutes, December 3, 1999, Exhibit #1.

[102] Mike Taylor, letter to Workers' Compensation Subcommittee, Minutes, June 23, 2000, Exhibit #2.

between 70% and 100% of the statewide average weekly wage would lead to system cost increases in the range of 5.3% to 9.5%.[103]

The third change would expand the maximum weekly benefit period for permanent partial disability benefits from 350 weeks to 400 weeks. The increase in system costs would be about 3.4%.

The forth change would reduce the waiting period for receiving temporary total disability benefits from 6 days (or 48 hours) to 3 days and would provide a retroactive payment for the first 3 days. The estimated increase in the system cost of this change would be 0.7%.

Jerry Keck, Department of Labor and Industry, discussed the significance of the role of safety programs in protecting workers, reducing the frequency of injuries in the workplace, and reducing workers' compensation costs. He described the essential elements of state safety policy:

- a workplace safety program requires employer commitment to safety, a written safety plan, a safety committee, and a safety education program;
- the involvement of workers' compensation insurers in assisting employers to design and carry out a risk management and safety plan; and
- the involvement of the state regulatory agency (Department of Labor and Industry) to ensure that safety requirements are fulfilled.

Mr. Keck said that the coal mining industry is highly regulated for safety. Each coal mine in Montana is inspected six times a year, while each metal mine is inspected only two times a year. He noted that injuries per

[103]Ibid.

100 workers in coal mining is much lower than injuries per 100 workers in metal mining.[104]

John Maloney, Safety Bureau, Department of Labor and Industry, described the Bureau's onsite consultation program. The Bureau is required to conduct safety inspections of public employers, but it may provide consultation services at the request of a private employer. The Bureau provides private employers with technical assistance in the identification and control of safety and health hazards in the workplace. However, the Bureau may not impose penalties or assess fines for safety violations. The Bureau has only 1 1/2 inspectors for 2,100 entities. Because the priority is for high-hazard workplaces, an employer could wait up to 7 years for a safety inspection.[105]

Members of the Workers' Compensation Subcommittee disagreed about the condition of the workers' compensation system. Senator Debbie Shea said that the system is in trouble. She recommended that benefits be revised and that more staff is needed at the Department of Labor and Industry for safety program and inspections. Senator John Hertel did not think the system was in a crisis. He agreed that safety programs should be enhanced and that the Subcommittee should consider increasing benefits to a limited extent. He also suggested that a future interim committee study in more depth the workers' compensation system. Representative Carley Tuss said that any recommendation for further study of the system should include a wide variety of participants.

Following a question and answer period with stakeholders, the Subcommittee requested that staff prepare draft legislation to include the following:

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[104]Workers' Compensation Subcommittee Minutes, June 23, 2000, p. 4.

[105]Ibid., p. 5

- increase the weekly benefit rate for permanent partial disability to 75% from 66 2/3% of the wages received at the time of injury;[106]
- reduce the waiting period for receiving temporary total disability benefits from 6 to 3 days and provide retroactive compensation;
- create a 7-member blue-ribbon committee on workers' compensation;
- revise payment of disability benefits;
- allow an employer to pay an employee for working at another job site; and
- provide an appropriation to the Department of Labor and Industry for mandatory public employer inspections and for consultation services for private employers.

FIFTH MEETING OF THE SUBCOMMITTEE

The Subcommittee held its fifth and final meeting on August 30, 2000. The purpose of the meeting was to consider the bill drafts requested at the June 23, 2000, meeting. The following is a summary of the provisions of the bill drafts and Subcommittee action. If the recommendation was approved by the Business, Labor, and Agricultural Committee, the official LC number is shown in parentheses.

Revise Permanent Partial Disability Rates

Under current law, a worker who suffers a permanent partial disability is entitled to receive 66 2/3% of the wages received at the time of injury. However, the benefit may not exceed 50% of the state's average weekly wage. This proposal would expand the weekly benefit rate from 66 2/3% to 75% of the wages received at the time of injury and increase the maximum weekly benefit from 50% to 75% of the average weekly wage. The following table shows the total change in total temporary

[106] In order to provide a more comprehensive increase in benefits for injured workers, the proposal also includes an increase in the maximum weekly benefit to 75% from one-half of the state's average weekly wage.

disability benefits (TTD) and permanent partial disability benefits (PPD) for injured workers by hourly wage for the type of injury described in a survey of other states conducted by the Department of Labor and Industry.

Table 2: Increase in Total TTD and PPD Benefits Based on Survey Results

Hourly wage	Current Total Benefits TTD and PPD	Revised Benefits	Percent Change	Average Total Benefits of Survey States
$5.15	$8,378	$8,978	7%	$13,120
$7.00	$21,188	$23,229	10%	$21,317
$10.00	$32,964	$43,683	32%	$33,834
$20.00	$37,081	$50,097	35%	$55,584

Source: Montana Department of Labor and Industry, Other States Benefit Survey and unpublished worksheet.

Total temporary benefits are included to show how an injured worker would benefit overall from the proposed changes and to compare the changes with Department of Labor and Industry survey states. The proposed increase in benefits produces mixed results when compared with the survey states. The minimum wage worker would experience a 7% increase in benefits but would still receive only 68% of the average benefits of the survey states. Conversely, the relative increases in benefits for higher wage earners is substantially more, with a $10 an hour worker much better off than the average injured worker at the same wage in the survey state.

The increase in the permanent partial disability benefits produces an anomaly in workers' compensation benefits in that the benefits received for partial permanent disability would exceed the temporary total benefits for every wage level up to $10.63 an hour.

According to NCCI estimates, the proposal would increase workers compensation system costs by about 10%. Opponents to the proposal were concerned about the increase in system costs, the inequity of benefit increases for lower-income workers, and the possible disincentive to return to work.[107]

Despite these concerns, the Subcommittee recommended that the bill draft be presented to the Business, Labor, and Agriculture Interim Committee for consideration. The full Committee approved the bill draft and requested that it be introduced as a Committee bill (See Appendix H).

Revise Waiting Period and Provide Retroactive Payment for Wage Loss

Under current law, a worker who is totally disabled and unable to work due to an injury may not receive compensation for the first 48 hours or 6 days' loss of wages following the injury. In an attempt to ease the financial impact on injured workers, this proposal would reduce the waiting period for an injured worker who is eligible to receive temporary total disability benefits from 6 days to 3 days (or 24 hours). In addition, it would provide retroactive compensation to an injured worker whose wage loss continues for more than 14 calendar days. The worker would be compensated from the first day's loss of wages following the date of injury.

Reducing the waiting period and providing a retroactive payment for lost wages would increase temporary total disability costs in Montana by 13.2%. However, the financial analysis also indicated that because temporary total disability costs in the state are very limited, the immediate impact of the legislation would be to increase system costs by about 1%.

[107]Letter from Mike Taylor, NCCI, August 30, 2000, in Workers' Compensation Subcommittee, Minutes, August 30, 2000, Exhibit #3. All references to the system impacts of proposed legislation are included in Taylor's letter.

The Subcommittee recommended that the bill draft be presented to the Business, Labor, and Agricultural Committee for consideration. The full Committee approved the bill draft and requested that it be introduced as a Committee bill (See Appendix E).

Create an Interim Workers' Compensation Study Committee

At the December 3, 1999, meeting of the Subcommittee, various stakeholders expressed interest in looking at issues that were beyond the scope of the SJR 15 study. One the major issues was the concern of adequacy of benefits versus the stability (or cost) of the system. Most of the legislative action with respect to workers' compensation in Montana is directed toward cost containment. The Subcommittee identified several issues for review, including the relationship of high premiums to low benefits, return-to-work incentives, the benefits of the Montana Safety Culture Act, and the creation of a fraud investigation function with the Attorney General's Office. And, as noted above, several stakeholders expressed interest in expanding the study of the workers' compensation system in the next interim.

Based on these recommendations, the Subcommittee requested staff to prepare a bill creating a "Blue Ribbon" interim committee to conduct a comprehensive study of the workers' compensation system. The study committee would have included four legislators, two representatives of insured employers, two representatives of labor, and a representative of the Governor. Because none of the "big boys" (insurance carriers, self-insurers, State Fund, Montana Chamber of Commerce, etc.) were included on the committee, there was strong opposition to the creation of the study committee. Although the proposal was approved by the Subcommittee, it was rejected by the full Committee.

Clarify Criteria for Conversion of Benefits and Provide Rehabilitation Benefits for Disabled Worker Waiting for Start of Rehabilitation Plan

In 1985, the Montana Supreme Court held that the state's workers' compensation law imposes a duty on an insurer to investigate and determine the nature and extent of an injured worker's disability before the insurer may convert a claimant from temporary total or temporary partial disability benefits to permanent partial disability benefits (Coles v. Seven Eleven Stores, 217 Mont. 343, 704 P.2d 1048 (1985)). The Court outlined four criteria that an insurer must apply before terminating temporary disability benefits. Because the criteria determined by the Court are found in Montana case law rather than in statute, an insurer or claimant may be unaware of the requirements for converting temporary disability benefits to permanent benefits. This proposal would amend section 39-71-609, MCA, to include the criteria required by the Court.

In addition, the proposal would address the "gap" in benefits that often occurs while an injured worker is waiting to begin an approved rehabilitation program. Under current law, a disabled worker is entitled to receive biweekly benefits for a period of time, not to exceed 104 weeks, as specified in a rehabilitation plan. If the rehabilitation plan requires the worker to attend vocational retraining classes that have not yet begun, the worker does not receive benefits during the delay. The proposal would provide that in addition to the specified number of weeks of rehabilitation benefits included in the rehabilitation plan, a disabled worker would be eligible for a maximum of an additional 10 weeks of rehabilitation benefits while waiting for the approved rehabilitation plan to begin.

According to NCCI, specifying the criteria that must be followed before converting a temporary disability benefit to a permanent disability benefit would increase costs by increasing the duration of temporary disability benefits. It must be kept in mind however, that LC0119 would not impose a new duty, but would rather clarify existing case law. Depending on the degree of utilization, the addition of up to 10 weeks of rehabilitation benefits during a waiting period would also add to the cost of the workers' compensation system.

The Subcommittee recommended that the bill draft be presented to the Business, Labor, and Agriculture Interim Committee for consideration. The full Committee approved the bill draft and requested that it be introduced as a Committee bill (See Appendix F).

Allow Injured Worker to Return to Alternative Position With Another Employer

This proposal would have allowed an injured worker who has not reached maximum medical healing and who has a physical restriction to return to an alternative position with a different employer if an alternative position was not available with the time-of-injury employer. Although the proposal would have provided an injured worker with the opportunity of employment, the Subcommittee was uncertain of the impacts on the employer at the time of injury or on the new employer. The Subcommittee decided not to recommend this proposal to the full Committee.

Provide Additional Appropriation to Department of Labor and Industry for Safety Inspections

Because of the apparent correlation of more safety inspections with reduced frequency of workplace injuries, the Subcommittee decided to enhance funding for the Department of Labor and Industry Safety Bureau. LC0125 would provide a general fund appropriation of $188,600 to the Department of Labor and Industry for the 2003 biennium for periodic safety inspections. The appropriation would allow the Department to hire two additional employees to conduct additional safety inspections as well as provide onsite consultation services to private employers. To ensure the continuation of the additional safety inspections, the proposal should be part of the general appropriation bill in future years.

The Subcommittee recommended that the bill draft be presented to the Business, Labor, and Agriculture Interim Committee for consideration. The full Committee approved the bill draft and requested that it be introduced as a Committee bill (See Appendix I).

Allow Travel Expenses For Medical Services

Montana law provides that an injured worker may not be reimbursed for travel expenses to obtain medical treatment unless the travel was requested by the insurer. This proposal would restore a provision eliminated in 1991 that required an insurer to reimburse a worker for reasonable travel, lodging, meals, and miscellaneous expenses incurred in travel for medical treatment. The amount of reimbursement would be specified in administrative rules adopted by the Department of Labor and Industry. Unlike the former law, this proposal would include specific items of travel expense reimbursements and exclusions that must be addressed by the rules adopted by the Department.

Because the Subcommittee officially requested the bill draft on August 30, NCCI did not analyze the fiscal impact of the proposal. However, the measure would lead to increased costs to the workers' compensation system.

The Subcommittee recommended that the bill draft be presented to the Business, Labor, and Agriculture Interim Committee for consideration. The full Committee approved the bill draft and requested that it be introduced as a Committee bill (See Appendix G).

SECTION THREE

SENATE JOINT RESOLUTION NO. 21: STUDY OF INCENTIVES TO PRESERVE AGRICULTURAL LANDS AND OPEN SPACE

Resolution Language

The study must include:

(1) an evaluation of incentives for preservation of agricultural land or open space, including transferable development rights programs; and

(2) an evaluation of incentives for cluster development, including transferable development rights programs.

BE IT FURTHER RESOLVED, that the committee assigned to conduct the study:

(1) may request assistance from any agency of state government, from any representative of local government, and from interested and knowledgeable citizens and organizations; and

(2) shall report to the Governor and to the 57th Legislature, as provided in 5-11-210, on its findings and recommendations, including recommendations for legislation, if appropriate.

INTRODUCTION

During the 1999 Legislative Session, the Montana Legislature considered Senate Bill No. 383 (SB 383), sponsored by Senator Don Hargrove, which proposed methods to preserve agricultural land and open space, including the use of cluster development and transferable development rights. The bill was designed to complement Senate Bill No. 97 (Chapter 582, Laws of 1999), a bill revising local planning and subdivision review processes and incorporating additional considerations to be addressed in "growth policies". Proponents of SB 383 were unsuccessful in mustering the necessary support to move the bill out of committee. The principal components of SB 383 were resurrected in Senate Joint

Resolution No. 21 (SJR 21), which was subsequently approved by both houses and assigned to the Business, Labor, and Agriculture Interim Committee for the 1999-2000 interim. The Committee invited several stakeholders to a meeting in March of 2000 to assist the Committee in outlining expectations and study parameters for the remainder of the interim. The stakeholders were chosen from witness lists of the session committees that heard SB 383.

STAKEHOLDER POSITIONS

Mr. Brent Morris, the Executive Director of the Gallatin County Open Lands Board, testified that the primary reason for the creation of the Open Lands Board was to preserve the financial integrity of the region's agricultural industry by developing effective processes by which farmers and ranchers could maintain their business operations and sustain their families and historical connection to the land.[108]

The Open Lands Board developed 16 options for preserving open space, two of which included the use of cluster development and transferable development rights.[109] Transferable development rights refers to the right to develop land being separated from other property rights.[110] Development rights may be transferred, meaning the right to develop may be bought and sold.[111] Typically, areas are designated as sending areas and receiving areas, whit sending areas identified for low-density development and receiving areas identified for higher density

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[108] Minutes, Business, Labor, and Agriculture Interim Committee, April 19-20, 2000, pp. 19-20.

[109] Environmental Quality Council Growth Report, January 1999, pp. 44-45.

[110] Ibid., p. 43.

[111] Ibid.

development.[112] Landowners in sending areas can sell their rights to develop the land to landowners in receiving areas.[113] The benefit, according to literature on the subject, is to allow communities to direct growth into more accommodating or appropriate areas.[114] According to the Environmental Quality Council 1999 Growth Report, transferring development rights has been used in three zoning districts in Gallatin County.[115]

The Montana Association of Realtors, represented by Mr. William Spilker, recommended that the Committee focus on the issue of "sprawl", including the identification of the reasons that sprawl is occurring.[116] Mr. Spilker also recommended that any action on the part of the Committee include an examination of the subdivision laws.[117]

Representatives from the Montana Environmental Information Center, Montana Association of Planners, Montana Audubon Society, Montana Building Industry Association, and Gallatin County Commission informed the Committee that a newly formed entity, the Montana Growth Policy Forum (Forum), was being convened by the Montana Consensus Council (Council) to conduct a preliminary discussion session to determine whether a collaborative approach could identify and recommend solutions associated with growth management issues.[118] It was the

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[112]Ibid.

[113]Ibid.

[114]Ibid.

[115]Ibid., p. 45.

[116]Minutes, Business, Labor, and Agriculture Interim Committee, March 2-3, 2000, p. 18.

[117]Ibid.

[118]Minutes, Business, Labor, and Agriculture Interim Committee, March 2-3, 2000, pp. 18-19.

collective recommendation of the stakeholders that the Committee explore whether SJR 21could be incorporated into the work of the Forum.

Committee staff attended the first meeting of the Forum and presented, along with the sponsor of SJR 21, a brief legislative history of the original concept and the rationale for raising the issue during the previous legislative session. The Forum had not, at the time this report was produced, made any formal recommendations regarding the policy issues associated with SJR 21. Conversations with the Forum's organizers, Dr. Matt McKinney, Executive Director of the Council, and Mr. John Mundinger, a private facilitator, suggested that Forum participants are interested in proceeding with their activities and are developing a number of objectives and strategies to address growth policy issues.

At the September 2000 meeting of the Forum, Senator Hargrove indicated that it was unlikely that the Committee would take additional action on the SJR 21 study. However, Senator Hargrove expects that there will be a proposal introduced during the next legislative session to allow counties to use transfer of development rights in their growth policies and that he would prefer that kind of legislation to be developed by a multiple-interest group like the Forum.[119]

FINDINGS

1. The Committee found that the policy issues raised by SJR 21, specifically incentives for preserving agricultural land and open space, and incentives to encourage the use of cluster development and transferable development rights are entwined with larger issues associated with growth planning.

[119] Draft memorandum to Montana Growth Policy Forum participants from Dr. Matt McKinney and Mr. John Mundinger, received via e-mail on September 15, 2000.

2. The Committee found that most of the stakeholders involved with SB 383 and SJR 21 supported including the policy questions contained in SJR 21 in a more encompassing investigation into growth planning as was proposed by the creation of the Montana Growth Policy Forum.

RECOMMENDATIONS

1. The Committee endorses the concept of building agreement on growth related issues and recommends that the Montana Growth Policy Forum continue exploring the issue of developing tools and incentives to preserve agricultural land and open space in Montana within the larger issue of growth policy planning.

PART TWO: STATUTORY COMMITTEE DUTIES

SECTION ONE
AGENCY PROGRAM REVIEW AND ADMINISTRATIVE RULES

BACKGROUND

Senate Bill No. 11, passed during the 1999 Legislative Session, restructured interim committees and process by creating six standing interim committees. Each committee continues to conduct any studies assigned to it by the Legislative Council, but has the added responsibility of reviewing agency administrative rules and monitoring the operation of assigned Executive Branch agencies. The substantive changes appear in 5-5-215, MCA.

5-5-215. Duties of interim committees. (1) Each interim committee shall:

(a) review administrative rules within its jurisdiction;

(b) conduct interim studies as assigned;

(c) monitor the operation of assigned executive branch agencies with specific attention to the following:

(i) identification of issues likely to require future legislative attention;

(ii) opportunities to improve existing law through the analysis of problems experienced with the application of the law by an agency; and

(iii) experiences of the state's citizens with the operation of an agency that may be amenable to improvement through legislative action; and.

The Business, Labor, and Agriculture Interim Committee was assigned oversight of the following agencies under SB 11:

C Department of Agriculture;

- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Public Service Commission; and
- State Auditor and Insurance Commissioner.

A memorandum of understanding was exchanged between the Committee and the State Administration, Public Retirement Systems, and Veterans' Affairs Interim Committee to include the State Fund, which is administratively attached to the Department of Administration, with the agencies assigned to the Committee.

A FORMAL APPROACH TO PROGRAM MONITORING

At the final meeting, on August 31, 2000, each agency presented information based on five specific requests that were developed by the Committee.[120] Those requests were:

- A brief report outlining new budget requests, existing program budget increases, and programs for which budget requests have decreased from the previous biennium.

- A complete and prioritized list of legislation requested by the agency. Items not approved, or even likely to be approved, by the Governor's Office should be included.

- Agency generated studies or investigations that address the quality of the services or programs delivered by the agency, results of the study or investigation, recommended action, and a report on whether the recommended actions are being implemented.

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[120] Minutes, Business, Labor, and Agriculture Interim Committee. Exhibits #2, 3, and 6 through 12, August 31 - September 1, 2000.

- A report on consumer complaints (if any) and actions taken by the Department to resolve problems.

- Outcomes of the most recent financial and performance audits, recommendations provided by the Legislative Auditor, and progress toward implementing the recommendations.

The Committee unanimously recommended that the program monitoring process be continued, but offered a number of suggestions designed to establish expectations that were realistic and that could be accomplished during an interim when the assigned tasks often stretch the limited resources of the Committee. The recommendations, determined by the members to be applicable to their own Committee, are as follows:

- Provide time during the first interim committee meeting to allow the committee and agency representatives to establish appropriate timeframes for the exchange of information.

- Clearly identify expectations and strive to present requests for information and presentations of information that meet those established expectations.

- Encourage agencies to present information to the Committee about the positive accomplishments of policy administration and recommend methods to replicate those successes in other policy areas.

AGENCY RULE REVIEW

At the request of a private citizen and Representative Bruce Simon, the Committee reviewed one rule change proposed by the Building Codes Division of the Department of Commerce. The adopted rule dealt with a $5 increase in the electrical permit renewal fee and the qualifications of the electrical inspectors. The Committee focused its attention and questions on the fee increase and requested that a representative from the Division of Building Codes appear before the Committee and present the Division's rationale for the increase.[121] Ultimately, a motion to "accept" the increase was approved by a majority of the members.[122]

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[121]Minutes, Business, Labor, and Agriculture Interim Committee, November 12, 1999, Exhibit #6.

[122]Minutes, Business, Labor, and Agriculture Interim Committee, March 2-3, 2000, p. 10.

PART THREE: OTHER ISSUES BEFORE THE COMMITTEE

SECTION ONE
SOLID WASTE AND FULL COST ACCOUNTING

BACKGROUND

Throughout the study of government competition with private vendors, representatives of the Montana Solid Waste Contractor's Association (MSWCA) and local government solid waste service providers presented their individual concerns to the Committee regarding unfair competition between public and private providers. The MSWCA focused on its view that under existing conditions, fair competition cannot occur because public providers often do not include in calculations all of their costs attributable to solid waste services, thus preventing an accurate comparison of costs between public and private providers.[123] It was recommended that the Committee investigate full cost accounting, a method that identifies direct and indirect costs, as one way of resolving concerns related to unfair competition.

The initial use of full cost accounting by governmental entities seems to have started within the arena of municipal solid waste programs. The U.S. Environmental Protection Agency (EPA) has produced detailed documents that provide publicly funded solid waste operations with examples of how to design and implement a full cost accounting model.[124] An EPA resource guide published in 1996 reports that at least six states and a number of local governments either required or were developing full cost accounting models for public solid waste

[123] Ibid., Exhibit #7.

[124] U.S. Environmental Protection Agency, Solid Waste and Emergency Response, *Questions and Answers About Full Cost Accounting*, February 1998.

providers.[125] In Montana, Ms. Sherrel Rhys, the Executive Director of the Jefferson County Solid Waste District, provided a real world example of the considerations needed to establish an effective and useful cost accounting structure to assist solid waste managers in effectively administering their responsibilities.[126] Ms. Rhys testified that Jefferson County had been undercalculating its costs until it began applying a full cost accounting method, that making the accounting change had been relatively easy, and that it had improved decisionmaking so that the county now plans to apply full cost accounting to all its programs.[127]

Existing law provides for how solid waste rates are established.

> **7-13-232. Determination of service charge.** (1) The board may establish, by resolution, rates for service charges, which may not be less than the actual cost of providing services. For solid waste management districts other than joint districts, the rates must be subject to the approval of the county commissioners.
>
> (2) Service charges may take into account:
>
> (a) the character, kind, and quality of service; and
>
> (b) the cost of providing the service, including but not limited to depreciation and the payment of principal and interest on money borrowed by the district for the acquisition and improvement of facilities and equipment.

The question facing the Committee became: Because solid waste districts are required to charge not less than the actual costs associated

[125] U.S. Environmental Protection Agency, Solid Waste and Emergency Response, *Full Cost Accounting Resource Guide*, August 1996.

[126] Land & Water Consulting, Inc., *Full Cost Accounting for Your Solid Waste Management Programs*, April 1998, in Minutes, Business, Labor, and Agriculture Interim Committee, April 19-20, 2000. Exhibit #15.

[127] Minutes, Business, Labor, and Agriculture Interim Committee, April 19-20, 2000, pp. 5-6.

with providing services, should more detail be provided in statute to ensure that all of the cost factors, both direct and indirect, are explicitly included in cost calculations? MSWCA suggested that it is not possible to comply with the existing statute without using a full cost accounting method.

Based on the experiences of Jefferson County, the MSWCA requested that the Committee either include in their final report a recommendation that local government solid waste districts institute a full cost accounting requirement for solid waste districts or request a bill draft to require that local government solid waste districts comply with a full cost accounting methodology established through legislation. Acknowledging the MSWCA's request, the Committee asked for a response from the Montana Association of Counties (MACO) and the Montana League of Cities and Towns (MLCT) regarding the use of full cost accounting by local solid waste districts.

Local government representatives provided testimony that generally supported the concept of full cost accounting. In a letter dated June 22, 2000, MACO Executive Director Mr. Gordon Morris stated that the most efficient use of local government resources is achieved if the price for a service is set at a level designed to recover 100% of the costs.[128] Additionally, Mr. Morris stated that the full cost accounting method is recognized and recommended as an effective way of correctly costing both direct and indirect costs.[129] Mr. Alec Hansen, the Executive Director of the MLCT supported the comments made by his counterpart at MACO.[130] However, Mr. Hansen added that he assumed that the

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[128]Montana Association of Counties Letter to the Business, Labor, and Agriculture Interim Committee, in Minutes, Business, Labor, and Agriculture Interim Committee, June 22-23, 2000. Exhibit # 2.

[129]Ibid.

[130]Minutes, Business, Labor, and Agriculture Interim Committee, June 22-23, 2000, p. 4.

purpose of applying full cost accounting to local government solid waste operations is to encourage privatization.[131] Privatization of local government services must ultimately be decided on the local level, and local governments do, in fact, make privatization decisions if a private sector provider offers a quality service at the lowest rate.[132] In concluding his remarks, Mr. Hansen stated that full cost accounting will be used increasingly by local governments on a voluntary basis because of budget constraints and it should not be mandated or encouraged by the state.[133]

Following the presentations and comments by the affected stakeholders, the Committee requested that the local government bodies and the private solid waste service providers work together to reach an agreement on the full cost accounting issue and report any progress before the interim closed in order to facilitate a recommendation by the Committee.

At the July 28, 2000, Committee meeting, Mr. Tom Daubert, the MSWCA representative, presented a series of concepts for legislation agreed to by both MACO and MSWCA, and that should be considered in any proposed draft legislation.[134] The condensed concepts are:

C All local governments and solid waste districts should be required to apply full cost accounting principles to their solid waste budgets and when applicable in bidding processes, apply full cost

[131]Ibid.

[132]Ibid.

[133]Ibid.

[134]Local Government/Solid Waste 2001 Legislation for Full Cost Accounting, in Minutes, Business, Labor, and Agriculture Interim Committee, July 28, 2000. Exhibit #5.

accounting when comparing projected costs and alternative service provider costs.

C Define full cost accounting to clarify that it means including all costs attributable to fulfilling solid waste functions.

C Establish a date for compliance (2002).

C Provide for program audits when disputes arise in connection with RFP outcomes. A private sector provider who requests an audit would be responsible for paying for an audit that concludes that the local government is in compliance with full cost accounting requirements.

Mr. Daubert informed the Committee that the discussions would continue throughout the Fall in order to determine whether substantial agreement could be reached to introduce a bill requiring full cost accounting during the 2001 Legislative Session.

At the final meeting, the Committee discussed two related comments offered by public sector solid waste providers. The first relates to the concern regarding the requirement that private sector providers may have proprietary issues that are unsuitable for public disclosure should a comparison between the public sector and private sector solid waste costs be conducted. Secondly, representatives from local government solid waste districts urged the Committee to consider requiring that private solid waste providers follow the same "format" as public solid waste providers when accounting for costs.

The Committee believed that while both concerns may be valid, each relates not to the implementation of full cost accounting, but to the process of comparing total public sector costs with proposed private sector prices, should a local decisionmaking body choose to make a comparison for the purposes of selecting a provider. Full cost accounting does provide decisionmakers with a baseline of information to begin to accurately compare the costs of two different service providers. The Committee was cognizant of the need to ensure that if a comparison between for-profit and publicly funded services providers takes place, those comparisons should be made using information in a fair and equitable process.

If, however, public solid waste districts implement a full cost accounting model to better inform the public of solid waste costs and make overall budgetary decisions using the information collected, the value in full cost accounting information serves a different audience and different set of conditions. For the Committee, the key component was the need to establish a methodology that provides costing information that affects the local government jurisdiction's overall budgetary requirements first. Issues associated with comparing public and private sector providers requires, in addition to cost information, other policy considerations such as quality of service, performance measures, contract monitoring costs, and citizen input.

FINDINGS

1. The Committee found that full cost accounting by local governments could improve the competitive environment, make competition fairer, assist in defusing privatization debates, and contribute to more informed decisionmaking and increased public awareness and involvement in solid waste issues at the local level.

2. Based on the testimony offered by the public and private sector providers of solid waste services, the Committee believes that both sectors agree on the value of implementing full cost accounting for solid waste districts.

RECOMMENDATION

1. The Committee supports the effort that public and private solid waste providers have put forward to develop consensus legislation to require that counties and solid waste districts implement a full cost accounting model by 2002 and recommends continued attempts to reach a similar agreement, if possible, with the Montana League of Cities and Towns.

SECTION TWO
PUBLIC UTILITIES AND THE REGULATORY ENVIRONMENT

BACKGROUND

During the Committee's final meeting of the interim, the members considered the possibility of recommending that a formal, inclusive review of the regulatory environment, as it relates to public utilities and the Public Service Commission, be established during the 2000-2001 interim. The intent behind the review was to provide a forum for legislators, public utilities, local governments, and the public to comment on the current state of the regulatory environment in Montana and recommend where changes could or should be made to ensure that public utilities and their customers are provided with adequate service.

The principal supporters of the review proposal were Mr. Larry Gesky and Ms. Sheila Rice, of Energy West, a natural gas supplier located in Great Falls. Ms. Rice suggested that the regulatory climate affecting public utilities has a direct impact on the state's role in fostering or facilitating economic development.[135] High-tech jobs, commonly believed to be high-paying, as well as reasonably clean and sustainable, require utility infrastructure for their success. The question as posed by Ms. Rice was whether the state is doing enough to ensure fair competition among utilities and sensible infrastructure development to help existing businesses expand and new businesses to relocate to Montana.[136]

Aside from Energy West, the only other public utilities present during the discussion were representatives of the telecommunications industry. The telecommunications representatives did not oppose the possibility of

[135] Minutes, Business, Labor, and Agriculture Interim Committee, August 31-September 1, 2000, p. 9.

[136] Ibid., p. 9.

convening the proposed forum and were in general agreement that advanced infrastructure is an effective selling point for companies seeking to relocate or expand. Nonetheless, they were reluctant to support a proposal that included their industry.[137] Because telecommunications is a rapidly advancing and changing arena driven by a different set of rules and technological advancements, any recommendations made regarding the state's regulatory climate would need to cast a critical eye toward the potentially unique issues associated with the telecommunications industry.[138]

The Committee expressed some concern about the scope of the issue presented and cautioned members and interested persons alike that, with recent events in the energy arena, the scope of the proposed regulatory review could extend into policy questions beyond the supporters' original intent.

FINDINGS

1. The Committee found that while the proposal offered by Energy West had merit, the Committee could not devote the time necessary to gather the appropriate information to frame the question for consideration by the full Legislature.

2. The Committee also found that the possibility of a review of the regulatory climate needs to be well-defined and objectives need to be clearly identified to ensure that the expectations of the participants are met.

RECOMMENDATION

[137] Ibid., pp. 9-10.

[138] Ibid., p. 10.

1. The Committee encouraged Montana public utilities regulated by the Public Service Commission to prepare and present to the 57th Legislature a concise collection of issues associated with the state's regulatory environment and to recommend whether changes are necessary to promote fair, open competition and facilitate economic development.

SECTION THREE
COOPERATIVE ASSOCIATIONS

BACKGROUND

At the urging of Senator Don Hargrove, Ms. Ellen Saputo of Big Timberworks, Inc., a timber frame construction company located in Gallatin Gateway, requested that the Committee review and recommend changes to Title 35, chapter 15, MCA, dealing with cooperative associations. Big Timberworks, Inc., chose to establish themselves as a workers' cooperative under the existing law and found that the language imposed restrictive conditions related to the length of time a cooperative association could remain in existence and the designated minimum and maximum price per share of stock that can be purchased by an employee.[139]

Mr. Dan Whyte, Chief Legal Counsel for the Office of the Secretary of State, reported that as the individual responsible for administering the laws related to cooperative associations, he informs cooperative associations when they are approaching the 40-year limit and interprets the language contained in Title 35, chapter 15, to mean that a business must have three to seven people.[140]

Ms. Saputo informed the Committee that although Big Timberworks, Inc. could choose a more traditional model of rewarding employees like employee stock ownership plans, the employees believed that the cooperative association reflected a scenario that allowed skilled craftsmen to "buy into" the company. Ms. Saputo also suggested that

[139] Minutes, Business, Labor, and Agriculture Interim Committee, January 14, 2000. Exhibit #4.

[140] Ibid, p. 7.

similar businesses in Montana were also interested in using the cooperative association law.[141]

FINDINGS

1. The Committee found that the existing law governing cooperative associations may be a hindrance to businesses that wish to organize as a workers' cooperative.

RECOMMENDATION

1. The Committee recommends that Title 35, chapter 15, parts 1 through 5, be revised to remove the 40-year duration that a cooperative association may be in existence and to remove the statutorily set price of employee shares (see LC0069, in Appendix B).

[141] Ibid., Exhibit #5.

SECTION FOUR
PROPRIETARY POSTSECONDARY EDUCATIONAL INSTITUTIONS

INTRODUCTION

The Education and Local Government Interim Committee's Joint Subcommittee on Postsecondary Education Policy and Budget requested the Committee to consider whether a legislative recommendation was appropriate and necessary to address a number of questions received by the Board of Regents following the closure of some proprietary postsecondary educational institutions in Montana and, in particular, questions regarding the schools' accreditation status, the impact of the closures on outstanding student loans, and the erroneous belief by parents and students that these postsecondary institutions, which have often used the title of "college" or "university", were under the jurisdiction of the Board of Regents.

BACKGROUND

In 1974, the Legislature enacted House Bill No. 749 (Chapter 296, Laws of 1974), which required the Department of Business Regulation (now Department of Commerce) to license and regulate proprietary postsecondary educational institutions in the state of Montana.[142] The 1974 law prohibited the operation of a proprietary postsecondary educational institution in the state without a license and permit issued by the Department. Under section 75-9207, R.C.M., the Department was required to ensure that each institution complied with minimum standards, including curriculum review and recordkeeping. Section 75-9215, R.C.M., authorized any person claiming loss or damage by a proprietary postsecondary institution or its agent, or both, to sue for damages, court costs, and attorney fees, while section 75-9216, R.C.M.

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[142] Minutes, Business, Labor, and Agriculture Interim Committee, November 12, 1999, Exhibit #8A.

authorized the Department to require that institutions post a surety bond in an amount determined by the Department. These provisions regulating proprietary postsecondary educational institutions were subsequently recodified and renumbered in Title 20, chapter 30, MCA, upon adoption of the Montana Code Annotated in 1979.

In 1995, the Department of Commerce submitted an agency bill draft request (House Bill No. 57) to the Legislative Services Division to transfer the regulation of proprietary postsecondary educational institutions to the Commissioner of Higher Education. At that time, the Department was informed that the proposed transfer of such duties by the Legislature to the Commissioner of Higher Education's office violated Article X, section 9, of the Montana Constitution, which vests the appointment and assignment of the Commissioner's duties in the Board of Regents. The Department was also advised that the Legislature could not assign the regulation of proprietary postsecondary educational institutions to either the Board of Regents or the Board of Public Education as Article X, section 9, provided that each Board, in addition to exercising jurisdiction over higher education and the public school system, could supervise or coordinate "other ***public*** educational institutions assigned by law."[143] Despite this information, the Department proceeded with House Bill No. 57 and a companion bill, House Bill No. 58, which proposed to repeal the provisions should the transfer to the Commissioner's office fail. Both House Bill No. 57 and House Bill No. 58 were tabled in Committee in 1995.

In 1997, the Department of Commerce again requested legislation to repeal the provisions requiring it to license and regulate proprietary postsecondary educational institutions.[144] In testimony supporting House Bill No. 58, the Department cited the potential for state liability

[143]Ibid., Exhibit #8B.

[144]Ibid., Exhibit #8C.

because the required regulation of such institutions had not occurred due to inadequate staff and funding. In 1997, House Bill No. 58 was enacted as Chapter 364, Laws of 1997, with a minor amendment recommended by the Insurance Commissioner. As a result, all the provisions related to the licensing and regulation of proprietary postsecondary educational institutions were repealed except for one provision maintaining an advisory council, now codified at 2-15-1804, MCA. Questions were raised during the 1997 Legislative Session by legislators concerning the wholesale repeal of the statutes regarding regulation of proprietary postsecondary educational institutions.[145]

In 1999, Senator Bea McCarthy requested legislation (LC 1646) that proposed to prohibit nonaccredited proprietary postsecondary educational institutions from awarding degrees in Montana and directed the drafter to utilize the laws of Idaho in preparing the legislation. However, that request was subsequently canceled and, as a result, the state of Montana has not regulated proprietary postsecondary educational institutions since 1997.

The issue of proprietary postsecondary educational institutions resurfaced in September 1999, when several Montana newspapers reported the problems confronting students as the result of the closure of the May Technical Colleges in Great Falls and Billings.[146] Because the schools were "postsecondary" in nature and used the name "college" or "university", many affected students, believing that there was a link between the school and the Montana University System, turned to the Board of Regents for assistance. At this time, the students learned that the credits taken at proprietary postsecondary educational institutions are not transferrable to the University System because the University System does not accept credits from schools that are not regionally

[145] Ibid., Exhibit #8D.

[146] Ibid., Exhibits #8E and 8F.

accredited. Even more devastating, while students who attended these institutions may apply to have their federal loans forgiven as a result of the school's closure, the loan discharge is available only if students have not completed their programs or transferred any credits earned at the school to another college. If one credit is transferred, students are required to pay back the full cost of their loans.

According to the Great Falls Tribune, while it is uncertain how many proprietary postsecondary educational institutions exist in Montana, the city of Billings is known to have at least 50, not including the May Technical College or Education America. Currently, Great Falls has at least three proprietary postsecondary educational institutions, including Park College, Lesley College, and Troy State University, none of which is accredited by an association recognized by the Board of Regents.

THE IDAHO EXAMPLE

Under Idaho law, proprietary postsecondary educational institutions are required to register with the State Board of Education and post a surety bond based on the number of students enrolled.[147] Each institution and its agent must register and obtain a permit to operate in the state, and the agent is prohibited from representing that the state has evaluated, recognized, accredited, or endorsed any course offered for sale by the institution. Additionally, students must sign a form acknowledging that the State Board of Education has not accredited or endorsed any course. For those schools with 100 or more students, Idaho requires a bond of $100,000; for schools with 50 to 99 students, $50,000; for schools with less than 50 students, $25,000. At a minimum, each school must post a $10,000 bond regardless of the number of students. Furthermore, Idaho also instituted a student tuition recovery account to mitigate losses suffered by any student enrolled in a proprietary postsecondary

[147] Ibid., Exhibit #8G.

educational institution that subsequently closes or breaches an agreement for the course of study undertaken by the student. The Board of Education is also authorized to assess a fee, based on the total course cost for each student enrolled, to pay for the costs of administering the recovery account. Money deposited into the account is exempt from execution and is not subject to litigation or liability by creditors in the event of bankruptcy.

FINDINGS

1. The Committee found that the closure of the May Technical College facilities in Great Falls and Billings created confusion for students who incorrectly assumed that the proprietary postsecondary institution was connected to the Montana University System.

2. The Committee found that it was important to balance the need to provide students with some level of protection from unscrupulous proprietary postsecondary educational institutions and allow legitimate businesses to offer specialized educational services without imposing overly burdensome regulatory restrictions.

RECOMMENDATION

1. The Committee recommended that draft legislation be prepared, using the State of Idaho's law as a model, to require that the Department of Commerce register and secure a surety bond from proprietary postsecondary educational institutions that wish to operate in Montana (see LC0007 in Appendix A).

PART FOUR
COMMITTEE BILL DRAFTS

APPENDIX A: LC0007

______ BILL NO. ______

INTRODUCED BY ____
(Primary Sponsor)

BY REQUEST OF THE BUSINESS AND LABOR INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A PROPRIETARY INSTITUTION THAT IS LOCATED IN THE STATE OR THAT SOLICITS BUSINESS WITHIN THE STATE OF MONTANA TO REGISTER WITH THE DEPARTMENT OF COMMERCE; PROVIDING EXEMPTIONS FROM THE REGISTRATION REQUIREMENT; IMPOSING A $200 REGISTRATION FEE AND A $50 ANNUAL RENEWAL FEE FOR EACH PROPRIETARY INSTITUTION; REQUIRING EACH PROPRIETARY INSTITUTION TO POST A $50,000 SURETY BOND; PROVIDING FOR CIVIL AND CRIMINAL PENALTIES; ELIMINATING THE PROPRIETARY POSTSECONDARY EDUCATIONAL ADVISORY COUNCIL; REPEALING SECTION 2-15-1804, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 10], the following definitions apply:

(1) "Accredited" means a school that has been recognized or approved as meeting the standards established by an accrediting agency recognized by the board or the United States department of education.

(2) "Agent" means a person owning any interest in, employed by, or representing a proprietary institution in this or another state who, by solicitation made in this state in any form, seeks to enroll or enrolls a resident of this state in a proprietary institution for remuneration or who

represents to the public that the person is representing a proprietary institution.

(3) "Board" means the board of regents of higher education created by Article X, section 9(2), of the Montana constitution and 2-15-1505.

(4) "Certificate of registration" means a nontransferable written approval issued by the department to an agent to operate or to contract to operate a proprietary institution in this state.

(5) "Course of study" means either a single course or a set of related courses for which a student enrolls.

(6) "Degree" means any academic, vocational, or honorary title or designation, mark, series of letters, or numbers or words, such as but not limited to "bachelor's", "master's", "doctorate", or "fellow", that signify or are generally understood to signify satisfactory completion of the requirements of a course of study beyond the secondary school level.

(7) "Department" means the department of commerce established in 2-15-1801.

(8) "Educational credentials" means a degree, diploma, certificate, transcript, report, document, or other letters of designation generally understood to mean enrollment in, attendance at, progress in, or satisfactory completion of the requirements or prerequisites for education through a proprietary institution.

(9) (a) "Proprietary institution" means any postsecondary or vocational-technical school, operated either for profit or on a nonprofit basis, that is located in the state of Montana or that solicits business within the state of Montana and that offers educational credentials.

(b) The term does not include an institution established and maintained by the board or the board of public education or a home school operated under 20-5-109.

<u>NEW SECTION.</u> **Section 2. Exemptions.** The following schools or courses of study are exempt from the provisions of [sections 1 through 10]:

(1) any program or course of instruction of an institution accredited by a national or regional accrediting agency recognized by the board, with notification of that recognition provided to the department by the board;

(2) education sponsored by a trade, business, professional, or fraternal organization principally for the membership of the organization or offered without payment of fees, unless the education is offered as leading toward educational credentials;

(3) avocational or recreational education and institutions offering the education;

(4) education offered by charitable or religious institutions, organizations, or agencies, unless the education is offered as leading toward educational credentials;

(5) institutions possessing a valid certificate issued by the federal aviation agency;

(6) a school or course of study that is otherwise regulated, licensed, or registered with the state under Title 37; or

(7) an organization offering continuing education for professional licensing requirements.

NEW SECTION. **Section 3. Federal requirements -- proprietary institution review.** To protect the interest of students and the federal accounts that support them, the department is designated as the state proprietary institution review entity.

NEW SECTION. **Section 4. Registration.** (1) A person representing a proprietary institution may not sell, offer for sale, distribute, or cause to be sold, offered for sale, or distributed any course of study in this state unless the person obtains a valid certificate of registration issued by the department.

(2) A certificate of registration expires on June 30 of each year.

NEW SECTION. **Section 5. Agent's certificate of registration.** (1) A person, group, association, or corporation, alone or in concert with others, may not:

(a) act as an agent unless the person, group, association, or corporation holds a certificate of registration to operate a proprietary institution issued by the department and maintains a surety bond as prescribed in [section 7];

(b) operate a proprietary institution in this state unless the proprietary institution is exempt from the provisions of [sections 1 through 10] or has received a certificate of registration issued by the department;

(c) offer instruction at, enrollment in, or grant educational credentials as or through an agent of a proprietary institution that is not exempt from [sections 1 through 10], whether within or outside of the state, unless the agent possesses a valid certificate of registration as required by this section; or

(d) accept or receive contracts or applications for enrollment from an agent unless the agent possesses a valid certificate of registration as required by [sections 1 through 10].

(2) An application for a certificate of registration furnished by the department must include:

(a) a statement signed by the applicant that the applicant has read the provisions of [sections 1 through 10];

(b) an initial annual fee of $200 for each certificate of registration. A certificate of registration is valid for the state fiscal year in which it is issued, unless revoked or suspended by the department for fraud or misrepresentation in connection with the solicitation for the sale of any course of study or for any violation of [sections 1 through 10]. Each certificate of registration must be renewed annually on July 1 at a cost of $50. The provisions of the Montana Administrative Procedure Act apply to the denial of a permit or to a proceeding conducted by the department to revoke or suspend a certificate of registration pursuant to [sections 1 through 10].

(3) The issuance of a certificate of registration pursuant to this section may not be interpreted to mean, and it is unlawful for a person holding a permit to expressly or impliedly represent by any means, that the department has made any evaluation, recognition, accreditation, or endorsement of any course of study being offered for sale by the agent or the proprietary institution.

(4) An agent holding a certificate of registration under the provisions of this section may not expressly or impliedly represent that the issuance of a certificate of registration constitutes an assurance by the department that any course of study being offered for sale by the agent or the proprietary institution will provide the student with education or training necessary to reach a professional, educational, or vocational objective or will result in employment or personal earnings for the student.

(5) Any oral or written statement, advertisement, or solicitation by an agent that refers to the department must state:

"[Name of proprietary institution] is registered with the Department of Commerce pursuant to [section 4], Montana Code Annotated."

(6) An agent may not make any untrue or misleading statement or engage in sales, collection, credit, or other practices of any type that are illegal, false, deceptive, misleading, or unfair.

(7) The department shall maintain records for 5 years of each application for a certificate of registration, each bond, and each issuance, denial, termination, suspension, and revocation of a certificate of registration.

(8) Fees collected under this section must be deposited in a state special revenue fund to be used by the department for the purpose of administering the provisions of [sections 1 through 10].

<u>NEW SECTION.</u> **Section 6. Student purchase statement.** Prior to accepting money from a student to purchase a course of study or to enroll in a course of study at a proprietary institution, the proprietary institution shall explain and obtain a signature below the following statement on a form that must be maintained by the institution in the student's file:

"I understand that [name of the proprietary institution] is registered with the Department of Commerce in accordance with [section 4], Montana Code Annotated. I also understand that the Board of Regents of Higher Education has not accredited or endorsed any course of study being offered by [name of proprietary institution] and that credits for courses of study received may not be transferable to a unit of the Montana University System."

NEW SECTION. **Section 7. Surety bond.** (1) At the time that an application is made with the department for a certificate of registration, the agent of a proprietary institution shall post a $50,000 surety bond for each proprietary institution located or operating in the state.

(2) The bond required under this section must be executed by the applicant as principal and be issued by an insurer authorized to do business in this state in favor of the state of Montana to indemnify any person for loss suffered as a result of the closure of the proprietary institution or the occurrence, during the period of coverage, of any violation of [sections 1 through 10] or violation of any other law. The bond must continue in effect for a minimum of 2 years after the proprietary institution ceases operation.

NEW SECTION. **Section 8. Records and reports.** Each proprietary institution shall maintain accounts and records to enable the department to determine whether the proprietary institution is complying with the requirements of [sections 1 through 10]. On its own initiative or upon the filing of a complaint with the department, the department may examine the accounts and records of a proprietary institution.

NEW SECTION. **Section 9. Civil relief -- criminal penalties -- enforcement -- injunctive relief.** (1) A person claiming loss or damage as a result of a violation of [sections 1 through 10] by a proprietary institution or its agent, or both, may file an action in a court of competent jurisdiction of this state against the proprietary institution or its agent, or both, and their sureties for the amount of damage or loss and, if successful, may receive court costs and reasonable attorney fees.

(2) A person, group, association, or corporation or an agent acting on behalf of another person, group, association, or corporation who violates the provisions of [sections 1 through 10] is guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed $1,000, by imprisonment not to exceed 6 months, or both. Each day's failure to comply with the provisions of [sections 1 through 10] is a separate violation and criminal penalties may be imposed by a court of competent jurisdiction in an action brought by the county attorney.

(3) The county attorney of any county in which a proprietary institution or its agent is located or soliciting business may acting alone or at the request of the department initiate an appropriate action, including injunctive or criminal proceedings, in a court of competent jurisdiction to enforce the provisions of [sections 1 through 10].

(4) Whenever it appears to the department that a person, agent, group, association, or corporation has violated any of the provisions of [sections 1 through 10] or has violated an order issued by the department, the department may file a petition for an injunction in any court of competent jurisdiction against the person, agent, group, association, or corporation to enjoin the violation or for an order directing compliance with the provisions of [sections 1 through 10].

NEW SECTION. **Section 10. Rulemaking authority.** The department shall adopt rules to implement [sections 1 through 10], including but not limited to the:

(1) establishment of policies and procedures for the registration of proprietary institutions; and

(2) development of a registration form and recordkeeping procedures.

NEW SECTION. **Section 11. Repealer.** Section 2-15-1804, MCA, is repealed.

NEW SECTION. **Section 12. Codification instruction.** [Sections 1 through 10] are intended to be codified as an integral part of Title 20, and the provisions of Title 20 apply to [sections 1 through 10].

NEW SECTION. **Section 13. Effective dates -- applicability.** (1) [Section 10 and this section] are effective on passage and approval.

(2) [Section 1 through 9, 11, and 12] are effective July 1, 2001, and apply to proprietary institutions located in or soliciting business within the state of Montana on or after July 1, 2001.

- END -

APPENDIX B: LC0069

______ BILL NO. ______

INTRODUCED BY ____
(Primary Sponsor)

BY REQUEST OF THE BUSINESS AND LABOR INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE COOPERATIVE ASSOCIATION LAWS; ELIMINATING THE 40-YEAR LIMIT ON EXISTENCE FOR COOPERATIVE ASSOCIATIONS; ELIMINATING THE LIMIT ON THE NUMBER OF PERSONS WHO MAY FORM A COOPERATIVE ASSOCIATION; REMOVING THE MINIMUM REQUIREMENT FOR INITIALLY SUBSCRIBED STOCK; ELIMINATING PRICE LIMITS ON COOPERATIVE ASSOCIATION SHARES; AUTHORIZING THE SECRETARY OF STATE TO ESTABLISH FILING FEES COMMENSURATE WITH COSTS; AND AMENDING SECTIONS 35-15-103, 35-15-201, 35-15-203, 35-15-204, 35-15-205, AND 35-15-401, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 35-15-103, MCA, is amended to read:

"35-15-103. Powers. (1) Associations formed under this chapter ~~shall be~~ <u>are</u> bodies corporate and politic for the period for which they are organized, ~~not exceeding 40 years~~ <u>which may be of perpetual duration</u>.

(2) ~~Associations~~ <u>An association</u> formed under this chapter may:

(a) sue and be sued;

(b) have a common seal ~~which they~~ <u>that the association</u> may alter or renew at pleasure;

(c) own, possess, and enjoy ~~so much~~ real and personal property ~~as shall be~~ necessary for the transaction of ~~their~~ business and sell and dispose of the ~~same~~ <u>property</u>; and

(d) borrow money and pledge ~~their~~ property, both real and personal, to secure the payment ~~thereof~~ <u>of any borrowed money</u>.

(3) Associations formed under this chapter ~~shall~~ have ~~and exercise~~ all powers necessary ~~and requisite~~ to carry into effect the objects for which ~~they~~ the associations may be formed ~~and such as are~~, including those powers usually exercised by cooperative associations, subject to all duties, restrictions, and liabilities set forth in the general laws ~~in relation~~ relating to similar corporations~~, except so far as the same may be~~ that are not limited or enlarged by this chapter."

Section 2. Section 35-15-201, MCA, is amended to read:

"35-15-201. Incorporation. (1) Whenever ~~any number of persons, not less than three or more than seven, may~~ a person or persons desire to ~~become incorporated~~ incorporate as a cooperative association for the purpose of trade or of ~~prosecuting~~ carrying out any branch of industry or the purchase and distribution of commodities for consumption or in the borrowing or lending of money among members for industrial purposes, ~~they~~ the person or persons shall ~~make~~ prepare a statement to that effect ~~under their hands setting~~ that also sets forth:

(a) the name of the proposed ~~corporation~~ cooperative association;

(b) its capital stock;

(c) its location;

(d) the duration of the association; and

(e) the particular branch or branches of industry ~~which~~ ~~they~~ that the association ~~intend~~ intends to ~~prosecute~~ carry out.

(2) In addition to ~~provisions~~ the items required in subsection (1), the statement of incorporation may also contain provisions not inconsistent with ~~law regarding~~ the liability provisions ~~as~~ set forth in 35-1-216.

(3) The statement, accompanied by the required filing fee, ~~shall~~ must be filed in the office of the secretary of state as the articles of incorporation of the association. ~~The~~ After receiving the statement and the fee, the secretary of state shall ~~thereupon~~ issue to ~~such~~ the person or persons forming the association a license as commissioners to open books for subscription to the capital stock of ~~such corporation,~~ the association at

~~such~~ a time and place ~~as they~~ that the person or persons forming the association may determine~~, for which he shall receive the fee of $20~~."

Section 3. Section 35-15-203, MCA, is amended to read:

"35-15-203. First meeting. As soon as ~~10 or more~~ the initial shares of the capital stock ~~shall be~~ have been subscribed, the commissioners shall convene a meeting of the subscribers for the purpose of electing directors, adopting bylaws, and transacting ~~such~~ other business ~~as shall~~ properly ~~come~~ before them. Notice ~~thereof shall~~ of the meeting must be given to each subscriber by ~~depositing same in the post office~~ mailing the notice, properly addressed, at least 10 days before the ~~time fixed,~~ meeting. The notice must contain ~~stating~~ the object, time, and place of ~~said~~ the meeting."

NEW SECTION. **Section 4. Fees for filing, copying, and services.** (1) The secretary of state shall establish by rule fees for filing documents and issuing certificates as required by this chapter.

(2) The secretary of state shall establish by rule fees for copying documents, priority handling, transmitting or filing facsimile copies, and providing computer-generated information.

(3) The fees prescribed under this section must be reasonably related to the costs of processing the documents and providing the services. The secretary of state shall maintain records sufficient to support the fees established under this section.

Section 5. Section 35-15-204, MCA, is amended to read:

"35-15-204. Issuance of certificate of organization -- effect. (1) The commissioners shall make a full report of ~~their proceedings~~ the first meeting, including ~~therein~~ a copy of the notice provided for in ~~the preceding section~~ 35-15-203, a copy of the subscription list, a copy of the bylaws adopted by the association, and the names of the directors elected and their respective terms of office~~,~~. ~~which~~ The report ~~shall~~ must be executed by at least a majority of the commissioners and ~~shall~~ must be filed in the office of the secretary of state along with any required filing fee. The secretary of state shall, ~~thereupon~~ upon filing the report, issue a certificate of the ~~complete~~ completed organization of the association~~,~~. ~~making a part thereof a copy of all papers filed in his office in and about the organization and duly authenticated under his hand and seal of the state, for which he shall receive the sum of $20, and thereupon a certified copy of said certificate shall be filed in the office of the county clerk in which the principal office of the association is located.~~

(2) Upon the filing of ~~said certified copy~~ the report of the first meeting and the statement of incorporation with the secretary of state and the issuance of the certificate provided for in subsection (1), the association ~~shall be deemed~~ is considered to be fully organized and may ~~proceed to~~ engage in business."

Section 6. Section 35-15-205, MCA, is amended to read:

"35-15-205. Amendment of articles of incorporation. At any time after the filing of the certificate of complete organization, the articles of incorporation may be amended. Any amendment of the articles of incorporation ~~shall first~~ must be first approved by two-thirds of the directors and then adopted by a vote of not less than two-thirds of those stockholders voting ~~thereon~~ on the issue at any regular meeting of the stockholders or at a special meeting of the stockholders called for that purpose. A certificate setting forth ~~such~~ any amendment ~~shall~~ must be executed on behalf of the association by its president or ~~vice-president~~ vice president and ~~its corporate seal affixed thereto and~~ attested to by its secretary. ~~Such~~ The certificate and any required filing fee ~~shall~~ must be filed in the office of the secretary of state, who shall ~~thereupon~~ issue a certificate of amendment of the articles of incorporation~~, for which he shall receive the sum of $10, and thereupon a certified copy of such certificate shall be filed in the office of the county clerk in which the principal office of the association is located~~."

Section 7. Section 35-15-401, MCA, is amended to read:

"**35-15-401. Classes of stock.** (1) The purchase price of the shares of stock ~~shall not be less than $10 or more than $5,000 per share~~ must be set by the cooperative association and may be made payable in installments.

(2) ~~Every~~ A cooperative association may divide its shares of stock into preferred and common stock. The holders of preferred stock ~~shall have no~~ may not have voting power and ~~shall~~ may not participate in the management and affairs of the association~~,~~. ~~and the~~ The owners ~~thereof~~ of preferred stock shall share in the profits of the association to the extent ~~of not exceeding 6% per annum on the par value thereof~~ determined by the cooperative association. The common stock may be divided into classes of different values, and the owners ~~thereof~~ of the common stock shall share in the profits of the association ~~in proportion to the par value of their shares~~ as determined by the cooperative association. However, the owners of common stock in the different classes ~~shall~~ have the same power and ~~vote~~ voting rights in the association.

~~(3) The stock heretofore issued in classes of different par values by any cooperative association is hereby legalized and made valid.~~"

NEW SECTION. **Section 8. Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 35, chapter 15, part 2, and the provisions of Title 35, chapter 15, part 2, apply to [section 4].

NEW SECTION. **Section 9. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

- END -

APPENDIX C: LC0122

______ BILL NO. ______

INTRODUCED BY ____
(Primary Sponsor)

BY REQUEST OF THE BUSINESS AND LABOR INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING CERTAIN DEPARTMENTS TO DEVELOP AND IMPLEMENT A FULL COST ACCOUNTING PILOT PROGRAM; PROVIDING FOR AN INTERIM STUDY OF A FULL COST ACCOUNTING PILOT PROGRAM; AMENDING SECTION 5-5-223, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 5] may be cited as the "Full Cost Accounting Act".

NEW SECTION. **Section 2. Legislative findings and declarations.** (1) The legislature finds that acknowledging the complete costs of agency programs and services enables policymakers to develop more informed decisions, identify opportunities for streamlining programs and services, facilitate cost-saving efforts, and better plan for the future.

(2) The legislature further finds that applying a full cost accounting model may result in the following benefits:

(a) agency rates and fees for goods and services that are set correctly and fairly;

(b) agency budget requests that are more clear and defensible; and

(c) programs or services that may be operated more effectively or offered for less cost.

(3) The legislature further finds that full cost accounting serves different goals and audiences than traditional government accounting reports.

(4) Therefore, the legislature declares that there is a compelling public need to adopt a full cost accounting model to isolate state agency program costs.

NEW SECTION. **Section 3. Policy and purpose.** The purpose of [sections 1 through 5] is to provide the legislature, the executive branch, and the public with a detailed description of individual program costs to:

(1) identify cost-effective methods of providing goods and services;

(2) assist the legislature in making decisions regarding the appropriation of public revenue; and

(3) establish rates and fees that reflect the true cost of providing goods and services.

NEW SECTION. **Section 4. Definitions.** As used in [sections 1 through 5], the following definitions apply:

(1) "Agency" means an office, position, commission, committee, board, department, council, division, bureau, section, or any other entity or instrumentality of the executive branch of state government.

(2) "Committee" means the business and labor interim committee provided for in 5-5-223.

(3) "Contractual components" means any written contracts that an agency has entered into with the private sector through which the private sector provides goods or services to the public or the agency.

(4) "Direct costs" means costs that are clearly and exclusively associated with an agency program or service.

(5) "Executive branch" means the executive branch of state government referred to in Article III, section 1, and Article VI of the Montana constitution.

(6) "Executive oversight" means the salary and expenses of an agency director, deputy director, or advisory board or commission.

(7) "Full cost accounting" means a systematic approach for identifying, aggregating, and reporting the actual costs of agency programs or services by accounting for all monetary resources used or committed by agency programs or services.

(8) "Indirect costs" means costs that are not exclusively related to an agency program or service and that benefit at least one other agency program or service. For the purposes of [section 5], indirect costs include but are not limited to the following services:

(a) accounting and payroll;

(b) human resource;

(c) legal;

(d) purchasing and procurement;

(e) data processing;

(f) records management; and

(g) executive oversight.

(9) "Program" means any legislatively or administratively created function, project, or duty of an agency.

(10) "Regulatory activities" means private sector services or functions that an agency regulates and provides in-house.

NEW SECTION. **Section 5. Full cost accounting pilot program -- duties of departments -- cost factors -- reporting requirements.** (1) Beginning July 1, 2001, each department listed in subsection (2) shall establish a full cost accounting model to determine the total cost of providing an agency program in-house, using the cost factors provided for in subsection (4).

(2) The following departments shall establish a full cost accounting model:

(a) department of administration, including the information services division and the central stores program;

(b) department of commerce;

(c) department of corrections;

(d) department of environmental quality;

(e) department of public health and human services; and

(f) department of transportation.

(3) (a) Except as provided in subsection (3)(b), each department shall choose programs for the full cost accounting model that represent at least 25% of the department's total budget as appropriated by House Bill No. 2 and House Bill No. 13, Laws of 2001, apart from any specific programs or divisions listed in subsections (2)(a) through (2)(f), and that represent a variety of funding sources, contractual components, and regulatory activities.

(b) The department of administration may not include the state fund in a full cost accounting model.

(4) The full cost accounting model must contain the following cost factors:

(a) direct costs, including but not limited to:

(i) employee wages, benefits, and pensions;

(ii) supplies and materials;

(iii) travel;

(iv) printing;

(v) rent;

(vi) utilities;

(vii) interest on capital items;

(viii) facility and equipment costs;

(ix) communications; and

(x) other costs expended for the exclusive benefit of the program; and

(b) indirect costs.

(5) Each department shall prepare a quarterly report of its findings to the committee. Each report must contain:

(a) the true cost of providing a service or program;

(b) issues associated with implementing and administering a full cost accounting model; and

(c) recommendations for changing the full cost accounting model to ensure the effective collection and use of information.

(6) Each department shall prepare and deliver a final report to the committee no later than September 1, 2002, that summarizes the department's quarterly findings and addresses any committee questions or recommendations.

NEW SECTION. **Section 6. Interim study of full cost accounting implementation and administration.** (1) (a) The legislative council shall assign the monitoring and review of the full cost accounting pilot program provided for in [section 5] to the business and labor interim committee.

(b) The committee shall convene regular meetings to monitor and advise each department listed in [section 5] on the effectiveness of the implementation and administration of a full cost accounting pilot program.

(c) Following a review of the reports presented by the departments, the committee may recommend:

(i) a transition schedule to include state agencies not taking part in a full cost accounting pilot program; and

(ii) legislation that would, in its opinion, resolve any issues raised by the committee, other legislators, the executive branch, and the public about the application of the full cost accounting model for all state agencies.

(2) The committee shall prepare for submission to the 58th legislature a report of its findings and any recommendations or proposed legislation.

Section 7. Section 5-5-223, MCA, is amended to read:

"5-5-223. Business and labor interim committee. (1) The business and labor interim committee has administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes:

~~(1)~~(a) department of agriculture;

~~(2)~~(b) department of commerce;

~~(3)~~(c) department of labor and industry;

~~(4)~~(d) department of livestock;

~~(5)~~(e) department of public service regulation; and

~~(6)~~(f) office of the state auditor and insurance commissioner.

(2) The committee shall review the implementation and administration of the full cost accounting pilot program and make recommendations for implementing a full cost accounting model for all state agencies."

NEW SECTION. **Section 8. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 11. Termination.** [This act] terminates July 1, 2003.

- END -

______ BILL NO. ______

INTRODUCED BY ____
(Primary Sponsor)

BY REQUEST OF THE BUSINESS AND LABOR INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR ONGOING LEGISLATIVE MONITORING OF AGENCY-PROVIDED GOODS AND SERVICES; REQUIRING THAT CERTAIN ENTITIES PREPARE A COMMERCIAL SERVICES INVENTORY; AMENDING SECTION 5-5-223, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Policy.** It is the policy of this state to:

(1) establish a formal and ongoing review process that objectively examines the delivery of public services to ensure that the public receives the highest quality of services at the most reasonable cost;

(2) encourage and promote agency service delivery innovations that increase productivity, efficiency, and effectiveness and that meet and strengthen the core missions of agencies; and

(3) use, to the maximum extent possible when it is in the public's interest, the private sector for the delivery of goods and services to the public and to agencies.

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 5], the following definitions apply:

(1) (a) "Agency" means an office, position, commission, committee, board, department, council, division, bureau, section, or any other entity or instrumentality of the executive branch of state government.

(b) The term does not include the state fund.

(2) "Board of regents" means the board of regents of higher education provided for in 2-15-1505.

(3) "Committee" means the business and labor interim committee provided for in 5-5-223.

(4) "Executive branch" means the executive branch of state government referred to in Article III, section 1, and Article VI of the Montana constitution.

(5) "Goods" means goods, as defined in 18-1-101, provided by an agency or a unit to the public, other agencies, or itself.

(6) "Private sector" means an entity or individual not principally a part of or associated with an agency that is associated with or involved in a commercial activity.

(7) "Services" means the furnishing of labor, time, or effort by an agency to the public, another agency or unit, or itself.

(8) "Unit" means a unit of the Montana university system.

NEW SECTION. **Section 3. Commercial services inventory.** (1) (a) Beginning July 1, 2001, each agency and unit shall prepare an annual commercial services inventory that contains the following information:

(i) a description of goods and services that could be obtained from the private sector; and

(ii) a description of goods and services that are provided or have in the past been provided by the private sector under a contract.

(b) In preparing the commercial services inventory, an agency shall solicit information from public employees responsible for providing goods or services in an effort to identify goods or services that, if obtained from the private sector, may allow an agency to better focus on meeting the agency's core mission through a reallocation of existing resources.

(c) When describing goods and services as required in subsection (1)(a)(ii), the agency shall provide the rationale for entering into a contract with the private sector or, if the contract was discontinued or not renewed, the reasons for discontinuing or not renewing the contract.

(2) (a) Each agency shall provide the commercial services inventory no later than June 30 of each year to the office of the governor, the office of budget and program planning, and the committee.

(b) The office of the governor, upon receipt of the commercial services inventory, may direct an agency to discontinue providing goods or services to the public, other agencies, or itself when, following a thorough review of fiscal and program considerations completed by the office of budget and program planning, the fiscal and program review has demonstrated that the private sector is capable of offering goods and services of comparable quality and cost.

(3) (a) Each unit shall provide the commercial services inventory no later than June 30 of each year to the board of regents and the committee.

(b) The board of regents, upon receipt of the commercial services inventory, may direct a unit to discontinue providing goods or services to the public, other agencies or units, or itself when, in the opinion of the board of regents, the private sector is capable of offering goods and services of comparable quality and cost.

(4) Following a decision by the office of the governor or the board of regents to discontinue providing goods or services, the office of budget and program planning shall prepare a report to the committee outlining:

(a) whether the agency or unit intends to contract with the private sector for the provision of a good or service;

(b) the cost savings, if any, of the decision;

(c) if intending to contract with the private sector for the provision of goods or services:

(i) information describing whether the quality of the good or service is equal to or greater than the quality of the good or service provided by an agency or unit; and

(ii) an estimate of taxes or fees to be paid by the private sector if awarded a contract;

(d) if the decision displaces public employees, the impact on public employees, including unemployment insurance, public assistance programs, other agency programs, or agency-provided goods and services; and

(e) legislative recommendations, if necessary, to implement the decision.

(5) The office of the governor and the board of regents shall prepare a joint biennial report to the legislature that provides a detailed narrative of the findings, conclusions, and recommendations made during the review of the commercial services inventories.

NEW SECTION. **Section 4. Legislative monitoring -- public and private competition.** (1) The committee shall provide an opportunity for the public to provide testimony related to:

(a) the commercial services inventories provided for in [section 3];

(b) specific examples in which an agency or unit is providing goods and services in competition with a private vendor;

(c) increasing or decreasing the level of agency or unit involvement in providing goods and services; and

(d) recommendations for legislation that authorizes the private sector to provide goods and services currently provided by an agency.

(2) After considering testimony presented pursuant to subsection (1), the committee may recommend:

(a) that the executive branch implement management practices that improve program delivery efficiency and effectiveness;

(b) that the executive branch initiate actions to suspend or discontinue the provision of goods and services by an agency that are available from the private sector;

(c) that an agency provide an invitation for bids or a request for proposals for the provision of goods and services;

(d) that an agency prepare a privatization plan according to the provisions of Title 2, chapter 8, part 3; or

(e) legislation that, in the committee's opinion, would:

(i) improve the quality and reduce the cost of providing in-house goods and services;

(ii) suspend an agency's authority to provide certain goods and services; or

(iii) authorize the privatization of goods and services provided by an agency by requiring that the goods and services be contracted to the private sector.

(3) For public testimony related exclusively to units, the committee may recommend to the board of regents the suspension or discontinuation of the provision of goods and services that are available from the private sector.

(4) The committee shall provide a biennial report of its activities and the commercial services inventories to the legislature.

NEW SECTION. **Section 5. Cooperation of agencies and units.** All agencies and units shall cooperate with the committee and, upon request, gather and provide information that would assist the committee in performing its duties and responsibilities under [section 4].

Section 6. Section 5-5-223, MCA, is amended to read:

"5-5-223. Business and labor interim committee. (1) The business and labor interim committee has administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes:

~~(1)~~(a) department of agriculture;

~~(2)~~(b) department of commerce;

~~(3)~~(c) department of labor and industry;

~~(4)~~(d) department of livestock;

~~(5)~~(e) department of public service regulation; and

~~(6)~~(f) office of the state auditor and insurance commissioner.

(2) The committee shall:

(a) review the commercial services inventories provided for in [section 3]; and

(b) conduct regular hearings to study and recommend policies that would increase the efficiency and effectiveness of an agency's service delivery processes."

NEW SECTION. **Section 7. Codification instruction.** [Sections 1 through 5] are intended to be codified as an integral part of Title 2, chapter 8, and the provisions of Title 2, chapter 8, apply to [sections 1 through 5].

NEW SECTION. **Section 8. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

- END -

APPENDIX E: LC0118

______ BILL NO. ______

INTRODUCED BY ____
(Primary Sponsor)

BY REQUEST OF THE BUSINESS AND LABOR INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REDUCING THE WAITING PERIOD FOR RECEIVING TEMPORARY TOTAL DISABILITY BENEFITS FROM 6 DAYS TO 3 DAYS AND PROVIDING FOR COMPENSATION RETROACTIVELY FROM THE FIRST DAY'S LOSS OF WAGES FOLLOWING THE DATE OF INJURY IF LOSS OF WAGES CONTINUES FOR MORE THAN 14 CALENDAR DAYS; AMENDING SECTION 39-71-736, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-736, MCA, is amended to read:

"39-71-736. Compensation -- from what ~~date~~ dates paid. (1) (a) ~~No compensation~~ Except as provided in subsections (1)(b) and (1)(c), compensation may not be paid for the first ~~48~~ 24 hours or ~~6~~ 3 days' loss of wages, whichever is less, that the claimant is totally disabled and unable to work due to an injury. A claimant is eligible for compensation starting with the ~~7th~~ 4th day.

(b) Compensation must be paid from the first day's loss of wages following the date of injury if the loss of wages continues for more than 14 calendar days.

~~(b)~~(c) ~~However, separate~~ Separate benefits of medical and hospital services must be furnished from the date of injury.

(2) For the purpose of this section, except as provided in subsection (3), an injured worker is not considered to be entitled to compensation benefits if the worker is receiving sick leave benefits, except that each day for which the worker elects to receive sick leave counts 1 day toward the ~~6-day~~ 3-day waiting period.

(3) Augmentation of temporary total disability benefits with sick leave by an employer pursuant to a collective bargaining agreement may not disqualify a worker from receiving temporary total disability benefits.

(4) Receipt of vacation leave by an injured worker may not affect the worker's eligibility for temporary total disability benefits."

NEW SECTION. **Section 2. Effective date -- applicability.** [This act] is effective July 1, 2001, and applies to a claim for benefits for an injury occurring on or after July 1, 2001.

- END -

APPENDIX F: LC0119

______ BILL NO. ______

INTRODUCED BY ____
(Primary Sponsor)

BY REQUEST OF THE BUSINESS AND LABOR INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE CRITERIA REQUIRED BEFORE AN INSURER MAY CONVERT A CLAIMANT'S TEMPORARY TOTAL DISABILITY BENEFITS OR TEMPORARY PARTIAL DISABILITY BENEFITS TO PERMANENT PARTIAL DISABILITY BENEFITS; PROVIDING FOR PAYMENT OF A MAXIMUM OF 10 WEEKS OF REHABILITATION BENEFITS WHILE A DISABLED WORKER OR WORKER WITH AN IMPAIRMENT RATING OF 15 PERCENT OR GREATER IS WAITING TO BEGIN AN AGREED-UPON REHABILITATION PLAN; AMENDING SECTIONS 39-71-116, 39-71-609, AND 39-71-1006, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-116, MCA, is amended to read:

"39-71-116. (Temporary) Definitions. Unless the context otherwise requires, words and phrases used in this chapter have the following meanings:

(1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.

(2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:

(a) investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(3) "Aid or sustenance" means a public or private subsidy made to provide a means of support, maintenance, or subsistence for the recipient.

(4) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the department. It is established at the nearest whole dollar number and must be adopted by the department before July 1 of each year.

(5) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under 18 years of age;

(c) an unmarried child under 22 years of age who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over 18 years of age who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of injury;

(e) a parent who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury if a beneficiary, as defined in subsections (5)(a) through (5)(d), does not exist; and

(f) a brother or sister under 18 years of age if dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections (5)(a) through (5)(e), does not exist.

(6) "Business partner" means the community, governmental entity, or business organization that provides the premises for work-based learning activities for students.

(7) "Casual employment" means employment not in the usual course of the trade, business, profession, or occupation of the employer.

(8) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(9) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors, listed in major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

(10) "Days" means calendar days, unless otherwise specified.

(11) "Department" means the department of labor and industry.

(12) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(13) "Household or domestic employment" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, but does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(14) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

(15) "Invalid" means one who is physically or mentally incapacitated.

(16) "Limited liability company" is as defined in 35-8-102.

(17) "Maintenance care" means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.

(18) "Medical stability", "maximum healing", or "maximum medical healing" means a point in the healing process when further material improvement would not be reasonably expected from primary medical treatment.

(19) "Objective medical findings" means medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

(20) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

(21) "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

(22) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if average payrolls are not available. This estimate must be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(23) "Permanent partial disability" means a physical condition in which a worker, after reaching maximum medical healing:

(a) has a permanent <u>compensable physical impairment or a permanent compensable mental</u> impairment established by objective medical findings;

(b) is able to return to work in some capacity but the permanent impairment impairs the worker's ability to work; and

(c) has an actual wage loss as a result of the injury.

(24) "Permanent total disability" means a physical condition resulting from injury as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

(25) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over the place of

business for the purpose of carrying on the employer's usual trade, business, or occupation.

(26) "Primary medical services" means treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability.

(27) "Public corporation" means the state or any county, municipal corporation, school district, city, city under a commission form of government or special charter, town, or village.

(28) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(29) "Reasonably safe tools and appliances" are tools and appliances that are adapted to and that are reasonably safe for use for the particular purpose for which they are furnished.

(30) (a) "Secondary medical services" means those medical services or appliances that are considered not medically necessary for medical stability. The services and appliances include but are not limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation facilities.

(b) (i) As used in this subsection (30), "disability" means a condition in which a worker's ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker's age, education, work history, and other factors that affect the worker's ability to engage in gainful employment.

(ii) Disability does not mean a purely medical condition.

(31) "Sole proprietor" means the person who has the exclusive legal right or title to or ownership of a business enterprise.

(32) "Temporary partial disability" means a physical condition resulting from an injury, as defined in 39-71-119, in which a worker, prior to maximum healing:

(a) is temporarily unable to return to the position held at the time of injury because of a medically determined physical restriction;

(b) returns to work in a modified or alternative employment; and

(c) suffers a partial wage loss.

(33) "Temporary service contractor" means a person, firm, association, partnership, limited liability company, or corporation conducting business that hires its own employees and assigns them to clients to fill a work assignment with a finite ending date to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

(34) "Temporary total disability" means a physical condition resulting from an injury, as defined in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical healing.

(35) "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

(36) "Treating physician" means a person who is primarily responsible for the treatment of a worker's compensable injury and is:

(a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;

(b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

(c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if there is not a physician, as defined in subsection (36)(a), in the area where the physician assistant-certified is located;

(d) an osteopath licensed by the state of Montana under Title 37, chapter 5;

(e) a dentist licensed by the state of Montana under Title 37, chapter 4;

(f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined in subsections (36)(a) through (36)(e) who is licensed or certified in another state; or

(g) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8, recognized by the board of nursing as a nurse practitioner or a clinical nurse specialist, and practicing in consultation with a physician licensed under Title 37, chapter 3, if there is not a treating physician, as defined in subsection (35)(a), in the area in which the advanced practice registered nurse is located.

(37) "Work-based learning activities" means job training and work experience conducted on the premises of a business partner as a component of school-based learning activities authorized by an elementary, secondary, or postsecondary educational institution.

(38) "Year", unless otherwise specified, means calendar year.

39-71-116. (Effective July 1, 2001) Definitions. Unless the context otherwise requires, in this chapter, the following definitions apply:

(1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.

(2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:

(a) investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(3) "Aid or sustenance" means a public or private subsidy made to provide a means of support, maintenance, or subsistence for the recipient.

(4) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the department. It is established at the nearest whole dollar number and must be adopted by the department before July 1 of each year.

(5) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under 18 years of age;

(c) an unmarried child under 22 years of age who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over 18 years of age who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of injury;

(e) a parent who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury if a beneficiary, as defined in subsections (5)(a) through (5)(d), does not exist; and

(f) a brother or sister under 18 years of age if dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections (5)(a) through (5)(e), does not exist.

(6) "Business partner" means the community, governmental entity, or business organization that provides the premises for work-based learning activities for students.

(7) "Casual employment" means employment not in the usual course of the trade, business, profession, or occupation of the employer.

(8) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(9) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors, listed in major group 23 in the North American Industry Classification System Manual. The term does not include office workers, design professionals, salespersons,

estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

(10) "Days" means calendar days, unless otherwise specified.

(11) "Department" means the department of labor and industry.

(12) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(13) "Household or domestic employment" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, but does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(14) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

(15) "Invalid" means one who is physically or mentally incapacitated.

(16) "Limited liability company" is as defined in 35-8-102.

(17) "Maintenance care" means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.

(18) "Medical stability", "maximum healing", or "maximum medical healing" means a point in the healing process when further material improvement would not be reasonably expected from primary medical treatment.

(19) "Objective medical findings" means medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

(20) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

(21) "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

(22) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if average payrolls are not available. This estimate must be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(23) "Permanent partial disability" means a physical condition in which a worker, after reaching maximum medical healing:

(a) has a permanent compensable physical impairment or a permanent compensable mental impairment established by objective medical findings;

(b) is able to return to work in some capacity but the permanent impairment impairs the worker's ability to work; and

(c) has an actual wage loss as a result of the injury.

(24) "Permanent total disability" means a physical condition resulting from injury as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

(25) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over the place of business for the purpose of carrying on the employer's usual trade, business, or occupation.

(26) "Primary medical services" means treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability.

(27) "Public corporation" means the state or a county, municipal corporation, school district, city, city under a commission form of government or special charter, town, or village.

(28) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(29) "Reasonably safe tools and appliances" are tools and appliances that are adapted to and that are reasonably safe for use for the particular purpose for which they are furnished.

(30) (a) "Secondary medical services" means those medical services or appliances that are considered not medically necessary for medical stability. The services and appliances include but are not limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation facilities.

(b) (i) As used in this subsection (30), "disability" means a condition in which a worker's ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker's age, education, work history, and other factors that affect the worker's ability to engage in gainful employment.

(ii) Disability does not mean a purely medical condition.

(31) "Sole proprietor" means the person who has the exclusive legal right or title to or ownership of a business enterprise.

(32) "Temporary partial disability" means a physical condition resulting from an injury, as defined in 39-71-119, in which a worker, prior to maximum healing:

(a) is temporarily unable to return to the position held at the time of injury because of a medically determined physical restriction;

(b) returns to work in a modified or alternative employment; and

(c) suffers a partial wage loss.

(33) "Temporary service contractor" means a person, firm, association, partnership, limited liability company, or corporation conducting business that hires its own employees and assigns them to clients to fill a work assignment with a finite ending date to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

(34) "Temporary total disability" means a physical condition resulting from an injury, as defined in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical healing.

(35) "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

(36) "Treating physician" means a person who is primarily responsible for the treatment of a worker's compensable injury and is:

(a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;

(b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

(c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if there is not a treating physician, as provided for in subsection (36)(a), in the area where the physician assistant-certified is located;

(d) an osteopath licensed by the state of Montana under Title 37, chapter 5;

(e) a dentist licensed by the state of Montana under Title 37, chapter 4;

(f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined in subsections (36)(a) through (36)(e) who is licensed or certified in another state; or

(g) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8, recognized by the board of nursing as a nurse practitioner or a clinical nurse specialist, and practicing in consultation with a physician licensed under Title 37, chapter 3, if there is not a treating physician, as provided for in subsection (36)(a), in the area in which the advanced practice registered nurse is located.

(37) "Work-based learning activities" means job training and work experience conducted on the premises of a business partner as a component of school-based learning activities authorized by an elementary, secondary, or postsecondary educational institution.

(38) "Year", unless otherwise specified, means calendar year."

Section 2. Section 39-71-609, MCA, is amended to read:

"39-71-609. Denial of claim after payments made or termination of all benefits or reduction to partial benefits by insurer -- fourteen days' notice required -- exception. (1) Except as provided in subsection (2), if an insurer determines to deny a claim on which payments have been made under 39-71-608 during a time of further investigation or, after a claim has been accepted, terminates all biweekly compensation benefits, it may do so only after 14 days' written notice to the claimant, the claimant's authorized representative, if any, and the department. For injuries occurring prior to July 1, 1987, an insurer ~~must~~ shall give 14 days' written notice to the claimant before reducing benefits from total to partial. However, if an insurer has knowledge that a claimant has returned to work, compensation benefits may be terminated as of the time the claimant returned to work.

(2) ~~Temporary total disability benefits may be terminated on the date that the worker has been released to return to work in some capacity~~ Unless the claimant is found, at maximum healing, to be without a permanent compensable physical impairment or a permanent compensable mental impairment from the injury, the insurer, prior to converting temporary total disability benefits or temporary partial disability benefits to permanent partial disability benefits:

(a) must have a physician's determination that the claimant has reached medical stability;

(b) must have a physician's determination of the claimant's physical restrictions resulting from the industrial injury;

(c) must have a physician's determination, based on the physician's knowledge of the claimant's job analysis prepared by a rehabilitation provider, that the claimant can return to work, with or without restrictions, on the job on which the claimant was injured or on another job for which the claimant is suited by age, education, work experience, and physical condition;

(d) shall give notice to the claimant of the insurer's receipt of the report of the physician's determinations required pursuant to subsections (2)(a) through (2)(c). The notice must be attached to a copy of the report.

(e) must have an evaluation by a rehabilitation provider establishing whether the claimant has an actual wage loss."

Section 3. Section 39-71-1006, MCA, is amended to read:

"39-71-1006. Rehabilitation benefits. (1) A worker is eligible for rehabilitation benefits if:

(a) (i) the worker meets the definition of a disabled worker as provided in 39-71-1011; or

(ii) the worker has, as a result of the work-related injury, a whole person impairment rating of 15% or greater, as established by objective medical findings, and has no actual wage loss;

(b) a rehabilitation provider, as designated by the insurer, certifies that the worker has reasonable vocational goals and reasonable reemployment opportunity. If eligible because of an impairment rating of 15% or more, with rehabilitation, the worker will have a reasonable increase in the worker's wage compared to the wage that the worker received at the time of injury. If eligible because of a wage loss, the worker will have a reasonable reduction in the worker's actual wage loss with rehabilitation.

(c) a rehabilitation plan is agreed upon by the worker and the insurer and a written copy of the plan is provided to the worker. The plan must take into consideration the worker's age, education, training, work history, residual physical capacities, and vocational interests. The plan must specify a beginning date and a completion date. The plan must specify the cost of tuition, fees, books, and other reasonable and necessary retraining expenses required to complete the plan.

(2) A ~~disabled~~ worker who meets the requirements of subsection (1)(a) is entitled to receive biweekly compensation benefits at the worker's temporary total disability rate. The benefits must be paid for the period specified in the rehabilitation plan, not to exceed 104 weeks. The rehabilitation plan must be completed within 26 weeks of the completion date specified in the plan. Rehabilitation benefits must be paid biweekly while the worker is satisfactorily progressing in the agreed-upon rehabilitation plan. Benefits under this section are not subject to the lump-sum provisions of 39-71-741.

(3) In addition to rehabilitation benefits payable under subsection (2), a worker who meets the requirements of subsection (1)(a) is entitled to receive rehabilitation benefits during a reasonable period, not to exceed 10 weeks, while the worker is waiting to begin the agreed-upon rehabilitation plan.

~~(3)~~(4) In addition to rehabilitation benefits payable under ~~subsection (2)~~ subsections (2) and (3), a disabled worker who was injured on or after July 1, 1997, is entitled to receive payment for tuition, fees, books, and other reasonable and necessary retraining expenses, excluding travel and living expenses paid pursuant to the provisions of 39-71-1025, as set forth in department rules and as specified in the rehabilitation plan. Expenses must be paid directly by the insurer.

~~(4)~~(5) A worker may not receive temporary total benefits and the benefits under subsection (2) during the same period of time.

~~(5)~~(6) A rehabilitation provider authorized by the insurer shall continue to assist the injured worker until the rehabilitation plan is completed.

~~(6)~~(7) To be eligible for benefits under this section, a worker is required to begin the rehabilitation plan within 78 weeks of reaching maximum medical healing.

~~(7)~~(8) A worker may not receive both wages and rehabilitation benefits without the written consent of the insurer. A worker who receives both wages and rehabilitation benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301."

NEW SECTION. **Section 4. Effective date -- applicability.** [This act] is effective July 1, 2001, and applies to a claim for benefits for an injury occurring on or after July 1, 2001.

- END -

APPENDIX G: LC0120

______ BILL NO. ______

INTRODUCED BY ____
(Primary Sponsor)

BY REQUEST OF THE BUSINESS AND LABOR INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THAT AN INSURER, PURSUANT TO ADMINISTRATIVE RULES ADOPTED BY THE DEPARTMENT OF LABOR AND INDUSTRY, REIMBURSE A WORKER FOR REASONABLE TRAVEL, LODGING, MEALS, AND MISCELLANEOUS EXPENSES INCURRED IN TRAVEL TO A MEDICAL PROVIDER FOR TREATMENT OF AN INJURY; PROVIDING EXCEPTIONS FROM REIMBURSEMENT; AMENDING SECTION 39-71-704, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-704, MCA, is amended to read:

"39-71-704. Payment of medical, hospital, and related services -- fee schedules and hospital rates -- fee limitation. (1) In addition to the compensation provided under this chapter and as an additional benefit separate and apart from compensation benefits actually provided, the following must be furnished:

(a) After the happening of a compensable injury and subject to other provisions of this chapter, the insurer shall furnish reasonable primary medical services for conditions resulting from the injury for those periods as the nature of the injury or the process of recovery requires.

(b) The insurer shall furnish secondary medical services only upon a clear demonstration of cost-effectiveness of the services in returning the injured worker to actual employment.

(c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(d) (i) The insurer shall reimburse a worker for reasonable travel, lodging, meals, and miscellaneous expenses incurred in travel to a medical provider for treatment of an injury ~~only if the travel is~~ ~~incurred at the request of the insurer~~ pursuant to rules adopted by the department. Reimbursement must be at the rates allowed for reimbursement ~~of travel by~~ for state employees.

(ii) Rules adopted under subsection (1)(d)(i) must provide for submission of claims, within 90 days from the date of travel, following notification to the claimant of reimbursement rules, must provide procedures for reimbursement receipts, and must require the use of the least costly form of travel unless the travel is not suitable for the worker's medical condition. Unless the travel is requested by the insurer, the rules must exclude from reimbursement:

(A) 50 miles of automobile travel for each calendar month;

(B) travel to a medical provider within the community in which the worker resides;

(C) travel outside the community in which the worker resides if comparable medical treatment is available within the community in which the worker resides; and

(D) travel for unauthorized treatment or disallowed procedures.

(e) Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury, the benefits provided for in this section terminate when they are not used for a period of 60 consecutive months.

(f) Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker has achieved medical stability, palliative or maintenance care except:

(i) when provided to a worker who has been determined to be permanently totally disabled and for whom it is medically necessary to monitor administration of prescription medication to maintain the worker in a medically stationary condition;

(ii) when necessary to monitor the status of a prosthetic device; or

(iii) when the worker's treating physician believes that the care that would otherwise not be compensable under subsection (1)(f) is appropriate to enable the worker to continue current employment or that there is a clear probability of returning the worker to employment. A dispute regarding the compensability of palliative or maintenance care is considered a dispute over which, after mediation pursuant to department rule, the workers' compensation court has jurisdiction.

(g) Notwithstanding any other provisions of this chapter, the department, by rule and upon the advice of the professional licensing boards of practitioners affected by the rule, may exclude from compensability any medical treatment that the department finds to be unscientific, unproved, outmoded, or experimental.

(2) The department shall annually establish a schedule of fees for medical services not provided at a hospital that are necessary for the treatment of injured workers. Charges submitted by providers must be the usual and customary charges for nonworkers' compensation patients. The department may require insurers to submit information to be used in establishing the schedule.

(3) (a) The department shall establish rates for hospital services necessary for the treatment of injured workers.

(b) Except as provided in subsection (3)(g), rates for services provided at a hospital must be the greater of:

(i) 69% of the hospital's January 1, 1997, usual and customary charges; or

(ii) the discount factor established by the department that was in effect on June 30, 1997, for the hospital. The discount factor for a hospital formed by the merger of two or more existing hospitals is computed by using the weighted average of the discount factors in effect at the time of the merger.

(c) Except as provided in subsection (3)(g), ~~beginning July 1, 1998,~~ the department shall adjust hospital discount factors so that the rate of payment does not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.

(d) The department may establish a fee schedule for hospital outpatient services rendered ~~on or after July 1, 1998~~. The fee schedule must, in the aggregate, provide for fees that are equal to the statewide average discount factors paid to hospitals to provide the same or equivalent procedure to workers' compensation hospital outpatients.

(e) The discount factors established by the department pursuant to this subsection (3) may not be less than medicaid reimbursement rates.

(f) For services available in Montana, insurers are not required to pay facilities located outside Montana rates that are greater than those allowed for services delivered in Montana.

(g) For a hospital licensed as a medical assistance facility pursuant to Title 50, chapter 5, the rate for services is the hospital's usual and customary charge. Fees paid to a hospital licensed as a medical assistance facility are not subject to the limitation provided in subsection (4).

(4) The percentage increase in medical costs payable under this chapter may not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.

(5) Payment pursuant to reimbursement agreements between managed care organizations or preferred provider organizations and insurers is not bound by the provisions of this section.

(6) Disputes between an insurer and a medical service provider regarding the amount of a fee for medical services must be resolved by a hearing before the department upon written application of a party to the dispute.

(7) (a) After the initial visit, the worker is responsible for 20%, but not to exceed $10, of the cost of each subsequent visit to a medical service provider for treatment relating to a compensable injury or occupational disease, unless the visit is to a medical service provider in a managed care organization as requested by the insurer or is a visit to a preferred provider as requested by the insurer.

(b) After the initial visit, the worker is responsible for $25 of the cost of each subsequent visit to a hospital emergency department for treatment relating to a compensable injury or occupational disease.

(c) "Visit", as used in subsections (7)(a) and (7)(b), means each time that the worker obtains services relating to a compensable injury or occupational disease from:

(i) a treating physician;

(ii) a physical therapist;

(iii) a psychologist; or

(iv) hospital outpatient services available in a nonhospital setting.

(d) A worker is not responsible for the cost of a subsequent visit pursuant to subsection (7)(a) if the visit is an examination requested by an insurer pursuant to 39-71-605."

NEW SECTION. **Section 2. Effective date -- applicability.** [This act] is effective July 1, 2001, and applies to a claim for benefits for an injury occurring on or after July 1, 2001.

- END -

APPENDIX H: LC0124

______ BILL NO. ______

INTRODUCED BY ____
(Primary Sponsor)

BY REQUEST OF THE BUSINESS AND LABOR INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE WORKERS' COMPENSATION WEEKLY BENEFIT RATE FOR PERMANENT PARTIAL DISABILITY AND THE MAXIMUM WEEKLY PERMANENT PARTIAL DISABILITY PAYMENT; AMENDING SECTION 39-71-703, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-703, MCA, is amended to read:

"39-71-703. Compensation for permanent partial disability. (1) If an injured worker suffers a permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits, the worker is entitled to a permanent partial disability award if that worker:

(a) has an actual wage loss as a result of the injury; and

(b) has a permanent impairment rating that:

(i) is established by objective medical findings; and

(ii) is more than zero as determined by the latest edition of the American medical association Guides to the Evaluation of Permanent Impairment.

(2) When a worker receives an impairment rating as the result of a compensable injury and has no actual wage loss as a result of the injury, the worker is eligible for an impairment award only.

(3) The permanent partial disability award must be arrived at by multiplying the percentage arrived at through the calculation provided in subsection (5) by 350 weeks.

(4) A permanent partial disability award granted an injured worker may not exceed a permanent partial disability rating of 100%.

(5) The percentage to be used in subsection (3) must be determined by adding all of the following applicable percentages to the impairment rating:

(a) if the claimant is 40 years of age or younger at the time of injury, 0%; if the claimant is over 40 years of age at the time of injury, 1%;

(b) for a worker who has completed less than 12 years of education, 1%; for a worker who has completed 12 years or more of education or who has received a graduate equivalency diploma, 0%;

(c) if a worker has no actual wage loss as a result of the industrial injury, 0%; if a worker has an actual wage loss of $2 or less an hour as a result of the industrial injury, 10%; if a worker has an actual wage loss of more than $2 an hour as a result of the industrial injury, 20%. Wage loss benefits must be based on the difference between the actual wages received at the time of injury and the wages that the worker earns or is qualified to earn after the worker reaches maximum healing.

(d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury the worker can perform only light or sedentary labor activity, 5%; if a worker, at the time of injury, was performing heavy labor activity and after the injury the worker can perform only medium labor activity, 3%; if a worker was performing medium labor activity at the time of the injury and after the injury the worker can perform only light or sedentary labor activity, 2%.

(6) The weekly benefit rate for permanent partial disability is ~~66 2/3%~~ 75% of the wages received at the time of injury, but the rate may not exceed ~~one-half~~ 75% of the state's average weekly wage. The weekly benefit amount established for an injured worker may not be changed by a subsequent adjustment in the state's average weekly wage for future fiscal years.

(7) If a worker suffers a subsequent compensable injury or injuries to the same part of the body, the award payable for the subsequent injury may not duplicate any amounts paid for the previous injury or injuries.

(8) If a worker is eligible for a rehabilitation plan, permanent partial disability benefits payable under this section must be calculated based on

the wages that the worker earns or would be qualified to earn following the completion of the rehabilitation plan.

(9) As used in this section:

(a) "heavy labor activity" means the ability to lift over 50 pounds occasionally or up to 50 pounds frequently;

(b) "medium labor activity" means the ability to lift up to 50 pounds occasionally or up to 25 pounds frequently;

(c) "light labor activity" means the ability to lift up to 20 pounds occasionally or up to 10 pounds frequently; and

(d) "sedentary labor activity" means the ability to lift up to 10 pounds occasionally or up to 5 pounds frequently."

NEW SECTION. **Section 2. Effective date -- applicability.** [This act] is effective July 1, 2001, and applies to a claim for a benefit for an injury occurring on or after July 1, 2001.

\- END -

APPENDIX I: LC0125

______ BILL NO. ______

INTRODUCED BY ____
(Primary Sponsor)

BY REQUEST OF THE BUSINESS AND LABOR INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF LABOR AND INDUSTRY FOR THE BIENNIUM FOR SAFETY INSPECTIONS REQUIRED BY THE MONTANA SAFETY ACT; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Appropriation.** There is appropriated to the department of labor and industry from the general fund $188,600 for the biennium for the periodic inspections required by 50-71-321.

NEW SECTION. **Section 2. Effective date.** [This act] is effective July 1, 2001.

- END -

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